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Governor's Task Force on EDA Tax Incentives

Established Pursuant to Executive Order No. 52 (Murphy)

First Published Report

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I. EXECUTIVE SUMMARY

The Task Force on the Economic Development Authority's Tax Incentives (the "Task Force") is an advisory body and, pursuant to its mandate, submits this first report (the "First Report") to advise the Governor of its initial findings and recommendations.

In January 2018, Governor Philip D. Murphy directed the Office of the State Comptroller to conduct a comprehensive performance audit of the Grow New Jersey Assistance Act ("Grow NJ") and Economic Redevelopment and Growth ("ERG") tax-incentive programs (each a "Program" and together, the "Programs"), and predecessor programs, from 2010 forward, to "inform the public about the EDA's operations" and "assist lawmakers in their deliberations as to whether these programs should be reauthorized when they expire on July 1, 2019." On January 9, 2019, New Jersey State Comptroller Philip J. Degnan (the "Comptroller") issued his audit report[1] of the State's tax-incentive programs. The Comptroller's audit report revealed, among other things, that the New Jersey Economic Development Authority (the "EDA") had failed to comply with the applicable statutes and regulations and to implement key internal controls for monitoring the performance of tax-incentive beneficiaries.

In response to the Comptroller's audit report, Governor Murphy issued Executive Order No. 52, which established this Task Force with the following objectives:

1. Conduct an in-depth examination of the deficiencies in the design, implementation, and oversight of Grow NJ and the ERG tax-incentive programs, including those identified in the Comptroller's audit report, to inform consideration regarding the planning, development and execution of any future structure of these or similar tax-incentive programs; and

2. Hold public hearings and request testimony from individuals who can provide insight into the design, implementation, and oversight of these programs.

The Task Force has been authorized to call upon any department, office, division or agency of the State to supply it with data and any other information or assistance available to such agency as the Task Force deems necessary to execute its duties. Each State agency also has been required to timely cooperate with the Task Force. In addition, Governor Murphy appointed Professor Ronald Chen, as the Chairman of the Task Force, to "perform all of the functions of a duly authorized representative of the Governor" pursuant to N.J. Stat. § 52:15-7, including the ability to "subpoena

[1] A Performance Audit of Selected State Tax Incentive Programs, Jan. 9, 2019.

and enforce the attendance of witnesses."[2] The Task Force has generally sought, in the first instance, to obtain information through witnesses' voluntary cooperation, but has also relied upon Professor Chen's subpoena power where necessary.

As described in more detail below, to fulfill its mandate, the Task Force has collected and reviewed thousands of documents—obtained from the EDA and other agencies, from companies awarded benefits under the Programs, and from other parties—and conducted 28 interviews to date. These interviews have included former and current EDA personnel and other government employees, as well as other parties with knowledge of or information about the design and administration of the Programs.[3] The Task Force has also interviewed several policy experts to provide insight on the structure and features of New Jersey's tax-incentive programs.

Although the Task Force's mandate encompasses both the Grow NJ and ERG programs, its investigation to date has focused primarily on Grow NJ. The Task Force's investigation is ongoing, and it intends to address ERG, as well as other aspects of Grow NJ, in later reports.

Given its mandate of examining the "design, implementation, and oversight" of the tax incentive programs, the Task Force began its analysis by dividing its efforts into two separate but related areas. In the first, it focused on the Programs' legislative underpinnings, examining factors relating to the design of the Programs, including whether special interests played a role in the statutory provisions. In the second, the Task Force focused on the EDA's implementation of the statutes and on its administration of the Programs. This included focus on examining the EDA's review and diligence over program applications to determine whether the EDA was employing meaningful scrutiny of those applications.

Although there is necessarily crossover among the issues encountered in these separate investigative areas, this investigative structure has enabled the Task Force to most efficiently and comprehensively examine the Programs. The description of our findings below follows this general investigative structure. The Task Force's findings are based upon the information available to the Task Force as of this date and are subject to further revision as the Task Force's investigation proceeds and additional information becomes available. In sum, the Task Force has found as follows:

[2] *See* March 22, 2019 Letter from Governor Murphy to Professor Chen.
[3] We do not name EDA staff referenced herein, but we do name certain EDA senior managers.

A. Special Interests, Which Prioritized Benefits to Private Parties Rather than the State, Had a Significant Impact on the Design of the Grow NJ Statutes and Regulations

With respect to the design of the statute, special interests—in the form of a law and lobbying firm and the clients on whose behalf it apparently operated—appear to have had a significant impact on the design of the Grow NJ statute as amended by the Economic Opportunity Act of 2013 (or "EOA 2013") and its implementing regulations. As a result of those special interests, EOA 2013 was—in several ways—structured to favor certain parties while disfavoring others in certain respects. For example, a statutory provision related to grocery stores in Camden appears to have been drafted to permit a particular grocery store to obtain tax incentives, while prohibiting a competitor grocery store from obtaining such benefits. Although neither grocery store ultimately opened in Camden, the drafts of this provision highlight the significant and, in the Task Force's view, inappropriate role special interests played in crafting the statute.

In addition, the Grow NJ program was dramatically expanded by EOA 2013 in numerous respects. Principal among these amendments were provisions that allowed projects in Camden—where many of the law firm's clients had business interests—to receive awards far in excess of what would have been possible in other parts of the State. Unlike the requirements applicable in other parts of the State that Grow NJ awards be anticipated to result in a net positive benefit to the State in terms of new tax revenue, these large awards for projects in Camden could be based on "phantom" taxes that would never actually accrue and thus might not result in a gain to the public fisc.

B. The EDA Did Not Have Adequate Procedures in Place to Ensure That It Discovered Relevant Information, Including Applicant Misstatements, That Would Have Led to Rejection of Some Applications or a Significant Reduction in the Amount of Certain Awards

With respect to the administration of the Programs, the EDA had only a few formal written policies and procedures to provide guidance to the EDA employees tasked with reviewing companies' applications for tax incentives. Even more troubling, the EDA lacked any formal training to ensure those same employees had a common understanding of Program requirements or clear rules for conducting due diligence on tax-incentive applications, which often involved awards of millions of dollars. This fundamental lack of controls led to important misunderstandings over threshold requirements for applications and inconsistency within the EDA in its evaluation and application of Program requirements—including confusion over even the basic level of scrutiny to be applied to applications, with some EDA employees viewing the vetting process as a "box

checking" exercise, during which a company's factual assertions deserved deference, and other employees applying meaningful scrutiny.

Relatedly, the EDA did not have any protocol or written standards for conducting research in connection with companies' applications for Program benefits. As a result, at least with respect to the applications the Task Force has investigated in detail thus far, some EDA employees conducted independent research to verify aspects of applicants' factual assertions and others failed to do so, even when relevant information was readily available. For example:

- A simple internet search revealed that one company, Holtec International, had been debarred by the Tennessee Valley Authority, even though Holtec said it had never been debarred in its Grow NJ application. Although such a debarment would have been grounds for the EDA to deny Holtec's application for tax incentives, the Task Force found no evidence that the EDA discovered Holtec's debarment. Apparently unaware of the debarment, the EDA ultimately approved Holtec for a $260 million Grow NJ award.

- Another simple internet search revealed that three companies—Conner Strong & Buckelew Companies, LLC, The Michaels Organization, LLC, and NFI, L.P.—committed to move to Camden more than a year before submitting their applications for tax incentives, in which they claimed they were considering relocating to Pennsylvania as a potential alternative. Had the EDA's employees found this information,[4] the EDA may have found these applications materially misleading, and denied an award on that basis. At a minimum, armed with this information, the EDA should have calculated these awards based only on new jobs moving to Camden from outside the State, and the awards to these three entities combined would have been reduced by over $70 million.

[4] As we discuss below in Section V(C)(4)(b)(i) of this First Report, we found evidence that the then-President and Chief Operating Officer of the EDA, Tim Lizura, should have reasonably known by September 24, 2015—thirteen months before these three companies applied for tax incentives under the Grow NJ program—that these applicants had committed to the Camden project. This meant that their certifications in their applications that jobs were "at risk" of leaving New Jersey were, at best, dubious. We found no evidence that Mr. Lizura shared this information with either the Business Development Officer or Underwriter responsible for these applications. We continue to investigate this issue.

To date, our investigation has uncovered no evidence that the EDA intentionally ignored this information, but the failure to have strict guidelines for such research made these lapses possible. Indeed, in another instance, the EDA failed to follow up on red flags (that is, concerns or cause to follow-up) in the actual application materials submitted by the applicant itself. The Cooper Health System acknowledged in its initial application materials that no jobs were at risk of leaving New Jersey and it was not considering any out-of-state locations. The EDA subsequently accepted, without any skepticism or further diligence, Cooper Health's later claim that it was considering an out-of-state relocation, and approved Cooper Health for nearly $40 million in tax incentives. The evidence shows otherwise. Had the EDA calculated Cooper Health's award based on its initial representation that no jobs were at risk of leaving the State, Cooper Health's award would have been approximately $7 million—more than $32 million lower than what it was awarded.

Although the Task Force's investigation is ongoing, below we make a number of recommendations for future legislation, as well as for the EDA's procedures in administering the Programs, based on its findings to date. By way of summary, those include:

- Designing any future legislation to ensure as much as possible that the public policy goals are applied neutrally, without favoring specific business interests;
- Assuring that persons or firms who represent tax-incentive applicants are properly registered as lobbyists under the New Jersey Legislative and Governmental Process Activities Disclosure Act;[5]
- Refraining from providing draft EDA regulations to people or firms that represent tax-incentive applicants outside the public notice-and-comment procedure under the New Jersey Administrative Procedure Act;[6]
- Taking steps to ensure that tax incentives are structured so that they result in a net gain to the State, or, if they do not, that fact is transparent;
- Ensuring that the language of any new legislation and implementing regulations more clearly sets forth the standards to be applied in determining eligibility for tax incentives;
- Strengthening the EDA's ability to withhold all or part of an award where a company has failed to meet its commitments, and ensuring that the EDA has sufficient data to fully evaluate a company's compliance with its incentive agreement;

[5] N.J. Stat. § 52:13C-18 et seq.
[6] N.J. Stat. § 52:14B-1 et seq.

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- Requiring the EDA to implement formal written policies and procedures governing all aspects of the Programs and their administration and to undertake to formally train its staff in how to review Program applications and monitor compliance;
- Requiring the EDA to use an experienced professional services firm to conduct a background check on each applicant and its affiliates and senior executives; and
- Strengthening the EDA's process for conducting diligence into an applicant's claim that it intends to locate out of state absent the award of tax incentives from New Jersey.

In addition to examining the design and administration of the Programs, the Task Force has established an accelerated recertification program, or "ARP," pursuant to which companies can voluntarily submit information to establish that they have been and remain in compliance with all Program requirements. We did this for two reasons: (1) we desired to streamline our work to focus on the most serious issues; and (2) if the EDA did an inadequate job vetting applications, but the applicant had business records to demonstrate its compliance with Program requirements, the EDA's oversight lapses for these applications would not have had a negative impact on the public fisc. Currently, 53 companies have pursued participation in the ARP.[7]

Finally, although our focus has been and shall remain on the EDA, our investigation necessarily involves a review of companies' tax-incentive applications to determine how the EDA administered the Grow NJ and ERG programs. As a corollary to our work, the Task Force has uncovered several instances where Program beneficiaries have—whether intentionally or not—failed to comply with Program requirements, either by submitting inaccurate information in their applications or by subsequently falling out of compliance. The Task Force has obtained some voluntary terminations of awards, and has referred others to the State Treasury or either law enforcement agencies, the EDA, or both, which may result in, among other things, steps to suspend or terminate these awards. The aggregate value of the awards that were either voluntarily terminated or may be subject to such suspension/termination actions exceeds $500 million.

II. INTRODUCTION TO THE PROGRAMS

New Jersey currently has two principal tax-incentive programs: Grow NJ and ERG. A brief summary of both programs follows.

[7] Of these companies, the Task Force has identified several companies that present threshold issues, which must be resolved before the company can proceed with the ARP. The Task Force is working with these companies to obtain additional information before it makes a final decision regarding their participation in the ARP.

Grow NJ is generally intended to incentivize the creation of new jobs in the State or the retention of existing jobs that, absent the provision of tax incentives, would be eliminated or relocated outside New Jersey. To qualify for tax incentives under Grow NJ, a company must agree to make a minimum capital investment in a business facility—for example, the company may construct a new office building or rent new office space—at which the company agrees to create a minimum number of new jobs or retain a minimum number of existing jobs that, absent the tax incentives, would be eliminated or relocated out of state.[8] The Grow NJ program is intended to incentivize a company's capital investment and job creation or retention, together often referred to as a "project" by the company To qualify for the tax incentives, the company is usually required to demonstrate that, unless the incentives are provided (in the language of the statute, "but for" the incentives), the company's jobs would be eliminated or located outside New Jersey.[9]

ERG is generally intended to incentivize commercial and residential real estate development in qualifying locations in the State. To qualify for tax incentives under ERG, applicants are required to demonstrate a project financing gap—the costs that remain to be financed after accounting for all other sources of capital. [10]

The Task Force's investigation to date has focused on the Grow NJ program.

III. INVESTIGATIVE PROCESS

In this initial phase of its investigation, the Task Force sought to go beyond the scope of the Comptroller's audit as required by Executive Order No. 52. To that end, the Task Force sought to examine the design of the Programs and, further, to identify and investigate internal-control deficiencies in the EDA's administration and implementation of the Programs. To accomplish these aims, the Task Force established an investigative process for two separate, but related, work streams:

A. First Work Stream: The Design of the Tax-Incentive Programs

To carry out its examination of the design of the Programs, the Task Force needed to examine the history of the statutes relevant to the Programs. These statutes included:

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[8] *See* N.J. Stat. § 34:1B-244(a).

[9] *See* N.J. Stat. § 34:1B-244(d). The statute has different provisions that apply to projects in Camden and Atlantic City, which replace the "but for" test that is applicable in other parts of the State with an alternative "material factor" test. These provisions are discussed below.

[10] *See* N.J. Stat. §§ 52:27D-489e, 52:27D-489c ("project financing gap" definition).

- The New Jersey Economic Development Authority Act, which in 1974 created the EDA as a state governmental agency and defined its authority.[11]
- The New Jersey Economic Stimulus Act of 2009 (the "ERG Act"), which created the ERG program in 2009, to be administered by the EDA.[12]
- The Grow New Jersey Assistance Act (the "Grow NJ Act"), which created the Grow NJ program in 2012, also to be administered by the EDA.[13]
- The New Jersey Economic Opportunity Act of 2013 ("EOA 2013"), which significantly revamped and expanded both the Grow NJ and ERG programs in 2013.[14]
- Multiple subsequent statutory amendments that revised the Grow NJ and ERG programs in relatively more minor ways between 2013 and the present.

Since the Governor's investigatory power is limited to the Executive Branch,[15] the Task Force did not affirmatively investigate the Legislature itself or its passage of these statutes, beyond what is available in the public domain. However, the statutes collectively create and define the Programs and, in addition, set out the parameters of the EDA's lawful discretion in its administration of them. As such, it is both within the Task Force's mandate—and necessary to the Task Force's mission—to analyze all pertinent aspects of the controlling statutory design, as embodied in the relevant statutes.

The Task Force began its analysis of the statutory design and history with publicly available documents, including the current versions of the statutes themselves and proposed and enacted bills and legislative statements.[16] The Task Force also reviewed and analyzed certain non-public evidence bearing upon the statutory design. During the investigation, the Task Force obtained draft

[11] P.L. 1974, c. 80 (current version codified at N.J. Stat. § 34:1B-1 et seq.).
[12] P.L. 2009, c. 90 (current version codified at N.J. Stat. § 52:27D-489e et seq.).
[13] P.L. 2011, c. 149 (current version codified at N.J. Stat. § 34:1B-242 et seq.).
[14] P.L. 2013, c. 161.
[15] N.J. Const., art. V, § 4, ¶ 5 ("The Governor may cause an investigation to be made of the conduct in office of any officer or employee who receives his compensation from the State of New Jersey, except a member, officer or employee of the Legislature or an officer elected by the Senate and General Assembly in joint meeting, or a judicial officer.").
[16] These draft versions of the bill are attached as Exhibits 1 and 2. The current statutes, as well as proposed and enacted bills legislative statements, are available on the Legislature's website. *See* N.J. Legislature, https://www.njleg.state.nj.us.

versions of the EOA 2013 bill dated June 21, 2013.[17] The draft reflected revisions made in "track changes" mode and included metadata showing the author of each respective revision. The Task Force also acquired and analyzed a substantial number of documents from governmental sources, including the EDA. In many cases, these documents provided further evidence concerning relevant context surrounding the statutory design and the parties who impacted it.[18] The Task Force also spoke to witnesses who provided context concerning the special interests that affected the statutory design in various respects.

Through review and analysis of these public and non-public materials, the Task Force acquired significant information concerning the design of the Programs and the limitations on the EDA's discretion in its administration of them. The Task Force received evidence demonstrating that the EDA opposed some of these statutory provisions and in certain instances advocated for alternative provisions. However, because they were enacted into law, the EDA was required to faithfully administer them, irrespective of whether they were justifiable as sound policy.

The Task Force also analyzed the design and history of the EDA's implementing regulations for the Programs. Like other governmental agencies tasked with the administration of government programs, the EDA is authorized by New Jersey law to promulgate regulations that interpret the statutes implemented by the agency, including the Grow NJ and ERG Acts. While agency regulations must be faithful to the laws they implement, they may provide additional rules beyond those expressly set out by the statutes—in this way, agency regulations serve to effectively "fill in the gaps" in the statutes. The New Jersey Administrative Procedure Act (the "APA") sets out certain procedures that New Jersey agencies, including the EDA, must follow when promulgating regulations.[19] The APA requires a so-called "notice-and-comment" process in which agencies, before issuing final regulations with the force of law, must first provide the public with notice of the regulations they are considering and receive and consider comments from interested members

[17] One of these draft versions was in the EDA's files. In addition, the Task Force learned that a law firm likely had additional versions of the draft legislation. Although this firm initially promised full cooperation with the Task Force, it subsequently declined to produce these versions without a subpoena.

[18] This investigation revealed that certain persons appeared to have engaged in unregistered lobbying in New Jersey, in apparent violation of the New Jersey Legislative and Governmental Process Activities Disclosure Act, N.J. Stat. § 52:13C-18 et seq. The Task Force referred this matter to appropriate law enforcement authorities, as previously disclosed.

[19] *See* N.J. Stat. § 52:14B-1 et seq.

of the public. The Task Force has investigated the EDA's processes in this respect, primarily through analysis of documents and information provided by the EDA.

B. Second Work Stream: EDA's Administration of the Tax-Incentive Programs

To carry out its examination of the EDA's administration and implementation of the Programs, the Task Force established an Investigative Process to methodically identify, collect, review, and analyze pertinent information and data. The Task Force began by conducting a linear investigation of the Grow NJ and ERG application processes, from pre-application discussions through approval to annual certification and credit of the tax incentive awards. We examined these processes both by looking at the EDA's internal processes and files and by gathering information about, and from, the companies that were awarded incentives under the Programs.[20] At the onset of our investigation, we met with Friedman Kaplan Seiler and Adelman LLP ("Friedman Kaplan"), counsel for the EDA to get an overview of the EDA's processes and procedures. We then deepened our understanding of the processes and applicants—and various issues with them—through interviews of relevant personnel (both from within the EDA and outside the EDA) and review of relevant documents. As discussed below, the initial scope naturally expanded as the Task Force acquired, reviewed, and analyzed relevant evidence bearing on the EDA's processes and individual companies.

1. Background Meetings

The Task Force requested to meet with the EDA, State Treasury, and the State Comptroller's Office immediately after its inception to better understand the interplay of various State agencies involved in the process. At the initial meeting referenced above, Friedman Kaplan provided a high-level overview of the application process from pre-application through certification of a tax-incentive grant. Friedman Kaplan has continued to work cooperatively with the Task Force to produce documents and information and to review and assess the internal processes and controls within the EDA as they relate to the tax-incentive programs.

The Task Force also met with members of the Treasury Department's Division of Taxation (the "Treasury"). The Treasury provided an overview of its role in the administration and implementation of the Programs. Beyond a general overview, Treasury explained the

[20] Although we have begun our investigation of the certification and credit-award processes, our investigation thus far has largely been focused on the earlier stages of the approval process.

documentation, memoranda, and certifications it reviews and approves before awarding a tax credit to a Program applicant.

The Task Force interviewed State Comptroller Philip Degnan and members of his audit team with the goal of obtaining a better understanding of the Comptroller's findings regarding the EDA's processes and procedures. Comptroller Degnan and his team provided an overview of their audit and findings and have continued to work collaboratively with the Task Force to provide information and offer consultation with respect to the Comptroller's audit.

The Task Force requested ongoing cooperation with the EDA and the State Comptroller's Office and for both entities to ensure that they were preserving relevant documents. The EDA, Treasury, and Comptroller's office have provided the Task Force with numerous documents in response to our requests. The bulk of the documents the Task Force has obtained have come from the EDA. Thus far, the Task Force has obtained over 1,069,789 pages of materials from the EDA and is continuing to conduct a strategic review of these materials.

2. Definition of Scope and Document Preservation and Collection

The Task Force worked collaboratively with the EDA to compile a list of all companies that have been certified to receive a Program award and did in fact receive a tax credit. Based on these parameters, there were 106 projects in the Task Force's initial scope. The Task Force subsequently expanded the scope of its investigation to include certain additional companies that had been approved for a tax-incentive award but that had not yet received tax credits. Those companies are discussed in more detail below.

a) Document Preservation and Company Outreach

The Task Force sent document preservation directive letters to companies that were identified as within its initial scope. The preservation notice informed the companies that the Task Force may seek information and documents relevant to the Programs and that the companies should take affirmative steps to ensure that all relevant documents would be preserved. To date, the Task Force has sent preservation letters to 116 companies.[21] In addition, the Task Force sent preservation notices to additional entities identified as related to Program applications and legislative design. In order to understand the EDA's review process for Program applications, the Task Force sought to identify what business records and documents existed, which would bear on company applications and certifications, even if the EDA chose not to request such documentation. The EDA has broad

[21] This includes companies that did not fall within the Task Force's initial scope but were later added to the investigative work stream based on leads obtained during the investigation.

authority to request additional information from applicants,[22] but did not use this express authority in every case.

The Task Force reached out to each company to confirm (a) that the company had received the preservation directive; and (b) that the company was taking requisite steps to comply with the directive. The Task Force made contact with a majority of the companies. However, there is still a small number of companies that have not been reached due to inaccurate contact information, dissolution of the company, or failure of the company to respond.

b) Refinement of Scope

In order to methodically review the EDA's oversight of Program applications, as discussed below in detail, the Task Force created an "accelerated recertification program" ("ARP"). In the ARP, the Task Force is providing companies an opportunity to demonstrate that they (a) are in compliance with the Programs and (b) applied for tax incentives in good faith. For companies that successfully recertify through the ARP, the Task Force has agreed not to request further documents or information.

The Task Force segregated processes for companies enrolled in the ARP from the remaining companies (the "Non-ARP Group"). As of the date of this report, there are 63 companies in the Non-ARP Group. For these companies, the Task Force is conducting a thorough investigation of the EDA's oversight of these applicants. We also interviewed a number of witnesses, who provided information concerning relevant misconduct by individuals associated with Program applicants.

The Task Force initially focused on Program applications where a "red flag" had been raised through our initial document review and interviews. In this regard, a draft of EOA 2013 edited by Parker McCay, a law and lobbying firm that represented several clients whose interests, as discussed below, were impacted by EOA 2013 played an important role in our focus. Because those drafts were edited by a private law and lobbying firm, which seemed to be adding special provisions to the bill to benefit particular clients, the Task Force viewed this as a serious "red flag" for those clients who certified that their jobs were "at risk" of leaving the State. The Task Force was skeptical that a client, on the one hand, would consult with their lawyer about—what amounted to—special legislation for their benefit but, on the other hand, was seriously considering a move

[22] *See* N.J. Admin. Code §§ 19:31-18:5 (Grow NJ) and 19:31-4.4 (ERG) (setting forth application submission requirements and providing that the EDA may request "any other necessary and relevant information as determined by the [EDA] for a specific application").

out of the State knowing it could receive very significant awards through the inclusion of those provisions.

c) Company and Third-Party Production of Documents

The Task Force has also obtained relevant documents from companies in the Non-ARP Group, from consultants and lawyers retained by companies in connection with their Program applications, and from additional parties with relevant information. The Task Force sought voluntary cooperation from all companies, individuals, and related entities, but when necessary, the Task Force recommended that Professor Chen issue subpoenas to obtain relevant documents.

3. Witness Interviews

In addition to the initial interviews described above, the Task Force has conducted numerous interviews of individuals relevant to is mandate. The Task Force has interviewed 12 current EDA employees. The employees interested were involved in the application pre-approval process at the officer, manager, and director levels as well as individuals in Human Resources, Operations and tax credit transfer positions. The Task Force has interviewed 2 former EDA employees who held senior leadership positions, Tim Lizura, the former President and Chief Operating Officer, and Maureen Hassett,[23] a former Senior Vice President of Finance and Development.

The Task Force also reached out to non-EDA individuals and potential witnesses identified as having information relevant to the Programs or to award recipients. Thus far, the Task Force has interviewed 14 non-EDA witnesses.

IV. LEGISLATIVE FOCUS: THE DESIGN AND IMPLEMENTATION OF THE TAX-INCENTIVE PROGRAMS

A. Initial Findings

As further discussed below, the draft versions of the EOA 2013 bill dated June 21, 2013, reviewed in conjunction with publicly available versions of the bill and other documents and information in the Task Force's possession, indicated that certain special interests played a key role in numerous provisions that were ultimately enacted into New Jersey law, and which, when administered by the EDA, would provide significant benefits to those special interests. Certain aspects of the Grow NJ program's design are difficult to justify from a rational policy perspective and can be understood only as the result of a process in which certain favored private parties were

[23] Ms. Hassett is currently working with the Treasury Department, but is still employed by the EDA.

permitted to shape the legislation to their benefit—and further, in some cases, to disfavor potential competitors.

The Task Force has found that the same special interests who successfully impacted the legislative design of the Programs were also afforded privileged status with respect to the Programs' implementing regulations. The EDA provided these special interests with early information about the regulations the agency was considering, prior to the notice provided to other members of the public, and permitted them to provide private feedback—which, in some instances, the EDA accepted and incorporated into the regulations. Moreover, the influence exerted by these special interests over this process was not disclosed to the public.

Thus, the Task Force's investigation to date has found that special interests succeeded in molding both the Programs' legislation and implementing regulations in their favor. The result is that New Jersey's tax-incentive programs have not been "neutral" in their design but have rather been structured in respects both large and small to favor the business interests of favored parties, sometimes in ways of debatable merit from a public policy standpoint. This is troubling for many reasons, including that the New Jersey Constitution contains certain prohibitions on "special legislation."[24] These constitutional prohibitions, the New Jersey Supreme Court has explained, were intended to combat "the propensities of legislatures to indulge in favoritism."[25] Given the findings discussed below, there may be reasonable questions as to whether New Jersey's current tax-incentive laws are compatible with constitutional requirements.

Some will certainly note that the problematic examples described below center on projects located in the City of Camden. The Task Force should not be misunderstood as disagreeing in any way about the desirability—indeed the necessity—of the State finding ways to encourage substantial reinvestment and growth in Camden, and in helping it meet the substantial challenges that it faces. Reinvestment in Camden has rightly been a priority for governors from both major political parties for decades. But as laudable as that *end* is, it does not necessarily justify, without any question or limitation, every conceivable *means* to accomplish it. "Shoehorning" the priority of *capital investment* in Camden in the Grow NJ program, the priority of which is the equally desirable but very different goal of *job growth*, has led to confusion in eligibility criteria, mismatched metrics of accountability, and lack of enforcement of the program requirements by the very agency that is responsible for monitoring it. Allocation of scarce public resources must inevitably involve some inquiry into the relationship, and resulting efficiency, between ends and

[24] N.J. Const., art. IV, § VII, ¶¶ 7-9.
[25] *Vreeland v. Byrne*, 72 N.J. 292, 298 (1977).

means, and the absence of that logical nexus has been painfully evident in the course of the Task Force's work.

1. Influence by Special Interests in Grow NJ's Legislative Design

The Grow NJ program was created in 2012 by the Grow NJ Act.[26] Compared to the version of Grow NJ that exists today, the original iteration of the program was relatively modest. Individually, the maximum awards available to program beneficiaries were far smaller than the maximum awards now possible under the current version of Grow NJ. Collectively, the original Grow NJ program provided a programmatic cap of up to $200 million in tax credits that the EDA could approve.[27] The current version of Grow NJ, by contrast, has no such programmatic cap, which has allowed tax incentive approvals to balloon to the point that billions are now outstanding. Indeed, under the current version of Grow NJ, multiple companies have been individually approved for awards in excess of $200 million in tax incentives, meaning that each of these companies by itself exceeded the maximum programmatic cap under the original iteration of the Grow NJ program.

The original version of Grow NJ existed for less than two years before it was significantly revamped and expanded by EOA 2013. The initial EOA 2013 bill was introduced in the New Jersey General Assembly on January 14, 2013 as Assembly Bill Number 3680. The Assembly passed the bill on May 20, 2013, and sent it to the Senate.

The Task Force has received evidence and information demonstrating that, during this period when EOA 2013 was before the Senate, certain special interests became involved in the drafting process—namely, the Parker McCay P.A. law and lobbying firm based in Mount Laurel, Hamilton, and Atlantic City, which drafted large swaths of the bill in various respects that appear to have been intended to benefit the firm's clients. Based on evidence and information in possession of the Task Force, Philip A. Norcross, Parker McCay's Managing Shareholder and Chief Executive Officer, and Kevin D. Sheehan, another partner of the firm, both worked on the drafting of the bill. Among other apparent intended beneficiaries of Parker McCay's drafting work was the Conner Strong & Buckelew insurance brokerage firm, headed by its Executive Chairman, George E. Norcross, III—the brother of Philip A. Norcross. Several years after EOA 2013 was enacted, on March 24, 2017, Conner Strong & Buckelew was approved for an $86 million award to relocate its

[26] P.L. 2011, c. 149.
[27] The EDA was also statutorily permitted to raise the programmatic cap if it would determine that doing so was "reasonable, justifiable, and appropriate."

offices to Camden. An award of that size would have likely been impossible if not for statutory amendments that Parker McCay played a pivotal role in incorporating into the legislative design.

The Task Force has received two Microsoft Word draft versions of the bill, both dated June 21, 2013—one draft dated several hours earlier than the other one—with revisions in "track changes" mode. The metadata in these documents appear to attribute many, but not all, of the revisions in the bill to Mr. Sheehan of Parker McCay.[28] In addition to this metadata, other documents and information in the Task Force's possession further corroborate that Mr. Sheehan, with the potential influence of Mr. Norcross, drafted these changes to the bill.

On June 24, 2013, the Senate Budget and Appropriations Committee favorably reported its amended version of the bill, which incorporated many of the bill revisions that were drafted in whole or in part by Parker McCay and reflected in the June 21, 2013 working drafts. As a result of these changes, the bill dramatically expanded in both length—the version of the bill favorably reported by the Senate committee was double the length of the bill that had been passed by the Assembly—and substantive scope. Numerous provisions were added to the bill expanding the availability of tax incentives under the Grow NJ program.

On June 27, 2013, the Senate passed its version of the EOA 2013 bill, incorporating many of Mr. Sheehan's revisions, and returned the bill to the Assembly. That same day, the Assembly concurred in the amended bill, with additional amendments, and returned it to the Senate. The Senate passed the amended bill on August 19, 2013, sending it to the Governor. Governor Chris Christie conditionally vetoed the bill on September 9, 2013, recommending limited revisions. The Assembly and the Senate both concurred in Governor Christie's recommended revisions and returned the bill to him. The EOA 2013 was finally enacted into law on September 18, 2013. The provisions of the bill drafted in whole or in part by Parker McCay largely survived this iterative process and were included in the final bill enacted into law.

Several of the most important or otherwise notable aspects of Grow NJ's amendments under the EOA 2013 are discussed below. These amendments, each of which Parker McCay appears to have had some role in drafting, are illustrative of some of the ways Grow NJ's statutory design following the enactment of the EOA 2013 was structured to favor chosen special interests in ways both large and small, sometimes arguably to the detriment of the public interest. It is important to

[28] These draft versions of the bill are attached as Exhibits 1 and 2. The authorship information in the metadata is not visible in these exhibits.

note that the EOA 2013's changes to the Grow NJ program were innumerable and complex, and most will not be discussed in this First Report.

a) Tax Incentives for Grocery Stores in Camden

Grow NJ, both in its original and current iterations, has generally precluded tax incentives for retail businesses.[29] The EOA 2013 included several provisions, however, drafted in part by Parker McCay, which expressly authorized the EDA, as an exception from the otherwise applicable exclusion for retail projects, to award tax incentives to companies that would build grocery stores in Camden. The policy basis to incentivize development of grocery stores in Camden is readily apparent, because Camden has for decades been described as a "food desert" in which there are insufficient grocery stores to serve the city's residents.[30]

However, notwithstanding the indisputable need to increase food access in Camden, the EOA 2013 did not allow tax incentives for all or even most potential grocery stores that could be built in the city. Instead, the EOA 2013 amended the Grow NJ statute to allow tax incentives for a "full-service supermarket or grocery store" *only* if it would be "at least 50 percent" of a larger retail development "of at least 150,000 square feet."[31] Therefore, the grocery store itself must be at least 75,000 square feet at a minimum to qualify for tax incentives. For reference, the average American grocery store size around this time was reported to be approximately 46,000 square feet—far below the minimum threshold size required to qualify for tax incentives under Grow NJ as amended by the EOA 2013.[32] If the goal was to alleviate the lack of local food access for Camden residents, an ostensible policy justification for limiting the incentives to supersized grocery stores, while

[29] *See* N.J. Stat. § 34:1B-243 (generally excluding "business[es] that [are] . . . engaged in final point of sale retail" from the definition of the "qualified business facilit[ies]" that are eligible for tax incentives).
[30] *See* Hr'g Tr. (May 2, 2019) at 202:24-203:6 (testimony that Camden was considered a food desert in which the city's residents lacked convenient access to a grocery store).
[31] *See* N.J. Stat. § 34:1B-243 ("qualified business facility" definition).
[32] *See* Brad Tuttle, *Your Grocery Store May Soon Be Cut in Half*, MONEY, June 2, 2014, http://money.com/money/136330/why-your-grocery-store-may-soon-be-cut-in-half; Brad Tuttle, *Fewer Choices, More Savings: The New Way to Buy Groceries*, TIME, Jan. 25, 2011, http://business.time.com/2011/01/25/fewer-choices-more-savings-the-new-way-to-buy-groceries.

excluding such incentives for grocery stores of average or even large sizes that would also provide Camden residents with increased food access, is not obvious.[33]

The Task Force's investigation to date has found that the cause of this statutory limitation appears to have not likely been considerations of the public interest, but rather the private business interests of one of Parker McCay's clients. In March of 2013, before the EOA 2013 was enacted, the owners of several grocery stores in New Jersey and a development firm announced that they had partnered in a joint venture to open a ShopRite grocery store in Camden, which would anchor a larger retail shopping center.[34] Mr. Sheehan and Mr. Norcross of Parker McCay represented the retail project, which, when completed, was planned to be over 150,000 square feet, with at least 50 percent occupied by the grocery store. Meanwhile, around this same time, another developer had separate plans to build a different retail development in Camden that would also be anchored by a grocery store. This competitor retail development was planned to be smaller, such that it would not qualify for tax-incentive subsidies under the EOA 2013 amendment, while the retail development that Parker McCay represented would.

It should be noted that both projects ultimately failed, and neither grocery store was built. The Task Force has received evidence demonstrating that the project Parker McCay represented initiated efforts to receive tax incentives from the EDA, but the project collapsed before any award was approved.[35] The competitor project, which was necessarily disqualified for tax incentives as a result of this EOA 2013 amendment, also failed.

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[33] EDA's former President and Chief Operating Officer Tim Lizura testified at the Task Force's May 2, 2019 public hearing that "[y]ou can make an argument" for tax incentives for grocery stores of any size in Camden, but with respect to this limitation, "it didn't offend us that that was the provision that was there." Hr'g Tr. (May 2, 2019) at 236:16-238:9.

[34] *See Mayor Redd, The Goldenberg Group, and Ravitz Family ShopRites Announce Major Retail Project in Camden*, CITY OF CAMDEN, March 19, 2013, https://www.ci.camden.nj.us/releases/mayor-redd-the-goldenberg-group-and-ravitz-family-shoprites-announce-major-retail-project-in-camden.

[35] *See* Allison Steele, *Long-promised Camden supermarket isn't coming*, PHILA. INQUIRER, Aug. 9, 2016, https://www.inquirer.com/philly/news/new_jersey/20160810_Long-promised_Camden_supermarket_isn_ t_coming.html ("Plans to build a ShopRite supermarket on the Admiral Wilson Boulevard in Camden, a project that officials had said would create permanent jobs and provide improved access to fresh, affordable food, have fallen apart, according to sources with knowledge of the situation. Instead, Actega North America Inc., a Delran-based company that makes coatings and sealants, on Tuesday was approved to receive $40 million in state tax incentives if it decides to

b) The Alternative Approach to Award Calculation for Incentivized Camden Projects

As a general rule, the Grow NJ Act provides that the size of a tax incentive award is determined by a relatively straightforward formula that is tied to the number of new jobs created by the company in New Jersey and/or the number of existing jobs retained by the company in New Jersey that, absent the tax incentive award, would be relocated out of state or eliminated.[36] First, a "base" amount per job—ranging from between $500 to $5,000 annually—is determined based on certain statutorily defined factors (primarily the location of the project).[37] Second, any applicable statutorily defined "bonus" amounts are applied to increase the total award per job.[38] For example, jobs in a "targeted industry" (the EDA is statutorily authorized to determine which industries are "targeted") are eligible to receive an increase of $500 annually per job.[39] Under this statutory formula, the maximum possible award per job is $15,000 annually.[40]

However, provisions of the EOA 2013, drafted in part by Parker McCay, amended the Grow NJ statute to set out an additional, alternative approach to award calculation exclusively for incentivized projects located in Camden. Under these provisions, the award calculation for Camden projects is effectively decoupled from the number of jobs created or retained by the company, and is instead tied to—and, unless capped by an applicable statutory limitation, equal to—the size of the company's capital investment in the project.[41] These provisions have allowed companies that agreed to make large capital investments in projects located in Camden to qualify for awards far exceeding the amounts that would have otherwise been permitted.

For an illustration of the difference between the statutory formula approach under Grow NJ for award calculation and what is often referred to as the "Camden alternative" approach, consider a hypothetical project in which a company will invest $100 million to build a new office building in New Jersey at which the company plans to hire 250 new employees. Under the formula approach applicable to projects in most of the State, with a maximum annual per-job award of $15,000, as

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build a 130,000-square foot headquarters on the site. . . . No explanation has been provided for why the ShopRite project collapsed.").

[36] *See* N.J. Stat. § 34:1B-246(a)–(d).

[37] *See* N.J. Stat. § 34:1B-246(b).

[38] *See* N.J. Stat. § 34:1B-246(c).

[39] *See* N.J. Stat. §§ 34:1B-246(c), 34:1B-243 ("targeted industry" definition).

[40] *See* N.J. Stat. § 34:1B-246(d).

[41] *See* N.J. Stat. § 34:1B-246(d) (subsection beginning, "Notwithstanding anything to the contrary set forth herein and in the provisions of subsections a. through f. of this section . . .").

discussed above, the largest possible award for the company would be $3.75 million each year ($15,000 x 250 jobs). Over the ten-year term for awards under Grow NJ, the maximum award would be $37.5 million ($3.75 million x 10 years). If the project were in Camden, however, and subject to the Camden alternative approach to award calculation, the company could receive an award of $100 million, equal to the size of the anticipated costs to build the new office building—over twice the size of the maximum award available in other parts of the State.

Numerous Parker McCay clients have benefited from the Camden alternative approach to award calculation. As noted previously, Parker McCay client, the Conner Strong & Buckelew insurance brokerage firm, was approved by the EDA on March 24, 2017 for an $86 million award to relocate 268 jobs from the company's existing offices to a new office tower to be built on the Camden waterfront. Pursuant to the Camden alternative provisions of EOA 2013, this award was based on the claimed anticipated costs of the office tower's construction. Under the formula approach to award calculation, the company could have potentially, in the best possible circumstances for it, qualified for a maximum award of $40.2 million ($15,000 x 268 jobs x 10 years).

The Task Force has not conducted an economic analysis of the approaches to award calculations under Grow NJ and therefore has made no finding concerning whether the increased size of Camden alternative awards is sensible as a matter of public policy. Indeed, given the enormous challenges facing Camden, one of New Jersey's poorest cities, an up-front decision by the State to appropriate substantial resources—through the normal procedures for allocating State resources—to invest in the capital infrastructure would have been completely understandable.

However, while there are certainly rational policy justifications for providing incentives for capital projects located in Camden, the Camden alternative approach in the EOA 2013, which do so in the context of an enhanced tax-incentive program ostensibly dedicated to job growth, has been criticized as excessive by a number of parties given the potentially large cost to the State, and even many of its defenders have said that it may need to be appropriately reconsidered in future legislation. For example, a July 2018 report (the "Rutgers Report") by Will Irving, Michael L. Lahr, and Ray Caprio of the Edward J. Bloustein School of Planning and Public Policy at Rutgers, the State University of New Jersey, which analyzed data concerning Grow NJ awards approved by the EDA to date, found that the average cost in tax incentives per job incentivized by the formula approach was $55,888, while the average cost per job under the Camden alternative approach was

$340,000—over six times more.[42] The Rutgers Report recommended that the Camden alternative approach "be revised to tie awards more closely to the employment created by these firms."[43]

Additionally, it should be noted that the "capital investment" definition in the statute, which, as described above, effectively operates to define the expenditures for which companies are eligible to receive recompense via tax credits, is extremely broad. The statute defines "capital investment" with respect to projects in Camden to include, among other things, any and all "development, redevelopment, and relocation costs."[44] The result is that a broad range of expenditures in Camden by Grow NJ beneficiary companies may be effectively reimbursed via tax credits—notably, including expenditures for which the public interest in state subsidization is debatable. For example, the new office tower on the Camden waterfront for which Conner Strong & Buckelew was approved for an $86 million award included a rooftop helipad, the construction of which is within the scope of the statutory "capital investment" definition. Whether Grow NJ was intended to enable the State to subsidize helipads for corporate executives can reasonably be questioned.

c) Expansion of Capital Expenditures Eligible for Tax Credits

As discussed above, the "capital investment" definition in the Grow NJ statute effectively operates to define the expenditures for which companies with projects in Camden are eligible to receive recompense via tax credits. It appears that Kevin Sheehan of Parker McCay had a role in amending the statute's "capital investment" definition in two ways apparently intended to benefit the firm's clients.[45]

First, Mr. Sheehan appears to have amended the definition to include, as an eligible expenditure, "pier, wharf, [or] bulkhead . . . construction or repair."[46] This amendment was likely intended to benefit several Parker McCay clients, including Conner Strong & Buckelew, that, as discussed in Section V(C)(4)(b) of this First Report, had plans to construct a new office tower on a pier on the Delaware River waterfront of Camden. As a result of this amendment, these clients would be allowed to receive tax credits for any such construction or repairs on the pier.

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[42] Rutgers Report at i–ii. The Rutgers Report is available on the EDA's website, at https://www.njeda.com/pdfs/NJEDA-Final-Incentives-Report_Governor.aspx.
[43] Rutgers Report at iii.
[44] *See* N.J. Stat. § 34:1B-243 ("capital investment" definition).
[45] In addition, it is notable that the "capital investment" definition was expanded to include expenditures on "professional services." However, the metadata does not reflect that Kevin Sheehan made that amendment.
[46] *See* N.J. Stat. § 34:1B-243 ("capital investment" definition).

Second, Mr. Sheehan appears to have also amended the "capital investment" definition to include "site acquisition" as an eligible expenditure if purchased within 24 months prior to the Grow NJ application, thereby allowing the firm's clients with planned projects in Camden to potentially receive tax credits for real estate that the company purchased before even applying to the EDA for the tax incentives.[47] This amendment has a clear tension with the overarching purpose of tax-incentive programs, which are intended to incentivize companies to make decisions that they have not already made and would not make absent the incentive. This provision, by contrast, affords tax credits for company decisions already made—that is, real estate already purchased. Precisely because of this tension, the EDA's former President and Chief Operating Officer Tim Lizura testified at the Task Force's May 2, 2019 public hearing that this provision "was always a challenge to administer" and he "never really understood the policy behind it."[48]

d) Phantom Taxes in the Net Benefit Test

Under the Grow NJ Act, every tax-incentive award must be anticipated to "yield a net positive benefit to the State."[49] In this context, the "benefit to the State" means tax revenues collectible by the State as a result of the fruition of the project for which the tax incentives were awarded—that is, tax revenue that the State would not collect in the absence of the tax incentives. For example, consider construction work in New Jersey that would not occur unless tax incentives are provided. If the incentives are awarded and the construction is commenced, any taxes collected by the State as a result of such incentivized construction, such as property taxes on the developed property and sales taxes on the building materials used in the construction, are "benefits to the State." Because of this so-called "net benefit" requirement under the Grow NJ Act, tax incentives under the Program are sometimes said to effectively "pay for themselves." That is, if the statute operates as intended, the State will collect tax revenue at least in the amount that the State "spends" on tax incentives, meaning that there is no loss to the public fisc.

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[47] Although the text of this provision has been revised by subsequent statutory amendments, Mr. Sheehan's amendment remains in substance in the current law. *See* N.J. Stat. § 34:1B-243 (defining "capital investment" in pertinent part: "In addition to the foregoing, in a Garden State Growth Zone [including Camden], the following qualify as capital investment: . . . site acquisition if made within 24 months of application to the [EDA]").

[48] Hr'g Tr. (May 2, 2019) at 228:11-230:19. As for why the provision would allow tax credits for site acquisition up to two years prior to the Grow NJ application but not earlier periods, Mr. Lizura said that he did not know of a policy reason for the distinction. *Id*. at 233:6-14.

[49] N.J. Stat. § 34:1B-244(a)(3).

However, the EOA 2013's amendments to the Grow NJ program included certain provisions that significantly undermined the net benefit requirement for projects in Camden. Pursuant to these provisions, the net benefit calculation "may utilize" the value of certain taxes that would otherwise accrue but were exempted from payment by operation of other provisions of law.[50] In other words, the Grow NJ Act was amended to provide that the net benefit calculation for projects in Camden may include "phantom taxes" as ostensible "benefits to the State" even if the State will never collect those taxes. As a result of these provisions, the "net positive benefit to the State" that is purportedly required by the law may be rendered illusory.[51]

The bill drafts in Microsoft Word format in the Task Force's possession, both dated June 21, 2013, do not contain these provisions, which were apparently not yet incorporated into the bill as of this date.[52] Therefore, the Task Force does not have a document with metadata that indicates the author of these provisions. However, the Task Force is in possession of email correspondence between government officials who were involved in the EOA 2013's drafting that refers to "the 'phantom tax' notion for NBT that Phil and Kevin laid out in [the] original bill draft."[53] Because Parker McCay represented numerous clients with project plans in Camden, these provisions would have allowed these companies to potentially receive large Grow NJ awards—pursuant to the Camden alternative approach provisions discussed above—without the State receiving a corresponding net positive benefit.[54]

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[50] N.J. Stat. § 34:1B-244(a)(3)(b).

[51] At the Task Force's May 2, 2019 public hearing, the EDA's former President and Chief Operating Officer Tim Lizura was asked whether these provisions "allowed projects to get through even though they weren't paying for themselves." Mr. Lizura responded, "I would say that's a pretty accurate statement." Hr'g Tr. (May 2, 2019) at 257:9-15.

[52] We have been advised that a law firm has additional versions of drafts of EOA 2013 from this time period. The Task Force has attempted to obtain these drafts through voluntary cooperation from that firm. To date, we have not been successful.

[53] Exhibit 3. The EDA's Tim Lizura, who received this email, testified concerning the email's reference to "Phil": "I assume that's Phil Norcross." Hr'g Tr. (May 2, 2019) at 251:3-19.

[54] Mr. Lizura testified that he recalled the following companies with approved Grow NJ awards as having benefited from the phantom tax provisions: Holtec International, Philadelphia 76ers, L.P., American Water (American Water Works Company, Inc., American Water Works Service Company, Inc., and American Water Enterprises, Inc.), Subaru of America, Inc., Conner Strong & Buckelew Companies, LLC, The Michaels Organization, LLC, NFI, L.P. When asked whether Parker McCay represented all of those companies, Mr. Lizura responded, "I recall they represent[ed] some, some role in most of those." Hr'g Tr. (May 2, 2019) at 257:16-258:14.

e) The Material Factor Test Applicable to Camden Projects

For incentivized projects in most parts of New Jersey, it is indisputable that, for a company to receive Grow NJ tax incentives for existing jobs in New Jersey, those jobs must be at risk of leaving the State or being eliminated. This is clearly set out in the statutory text, which requires companies to establish that "but for" the provision of tax incentives, the jobs would be relocated out of state or eliminated:

> "[T]he business's chief executive officer, or equivalent officer, shall submit a certification to the [EDA] indicating: (1) that any existing full-time jobs are at risk of leaving the State or being eliminated; (2) that any projected creation or retention, as applicable, of new full-time jobs would not occur but for the provision of tax credits under the program; and (3) that the business's chief executive officer, or equivalent officer, has reviewed the information submitted to the [EDA] and that the representations contained therein are accurate . . . ."[55]

As discussed above, the Task Force reviewed the June 21, 2013 EOA 2013 bill drafts.[56] The metadata in these documents appear to show that Kevin Sheehan of Parker McCay amended the above-quoted language to add a provision expressly stating that the risk of an out-of-state relocation "shall not be required with respect to projects in [Camden]." Mr. Sheehan proposed to amend the provision as follows:

> "[T]he business's chief executive officer, or equivalent officer, shall submit a certification to the [EDA] indicating that: (i) any existing full-time jobs are at risk of leaving the State or being eliminated; (ii) that any projected creation, or retention as applicable, of new full-time jobs would not occur but for the provision of tax credits under the program; and, (iii) that the business's chief executive officer, or equivalent officer, has reviewed the information submitted to the [EDA] and that the representations contained therein are accurate, **provided however, item (i) shall not be required with respect to projects in [Camden]**. . . ."[57]

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[55] N.J. Stat. § 34:1B-244(d).
[56] Exhibits 1 and 2.
[57] Additionally, in the current version of the statute, there is also language that makes this provision apply to projects in Atlantic City as well as to projects in Camden. The Atlantic City language was

(Emphasis added).

On Friday, June 21, 2013, at 8:12 PM, an aide to then-Governor Chris Christie, Colin Newman, who was involved in EOA 2013's drafting, sent an email to several senior EDA officials—Tim Lizura, Maureen Hassett, and Michele Brown—attaching a working draft of the bill containing the above-quoted amendment by Mr. Sheehan of Parker McCay.[58] Mr. Newman noted in the email that the bill draft presented certain "issues" that needed to be discussed over the weekend.[59] On Sunday, June 23, 2013, at 10:31 PM, Mr. Newman sent an email to Mr. Lizura and Ms. Hassett, stating that they needed to prepare "compromise language" with respect to the above-quoted provision.[60] Mr. Newman proposed language that would have restored the requirement that, for projects in Camden, there be a risk of out-of-state relocation to receive tax incentives for retaining jobs.[61] Throughout the morning and afternoon of Monday, June 24, 2013, Mr. Newman, Mr. Lizura, and Ms. Hassett proceeded to iteratively draft additional versions of proposed compromise language, while appearing to complain that the other side of the negotiations continued to produce "unsatisfactory" counterproposals.[62]

By the afternoon of June 24, 2013, the negotiating parties appear to have agreed to compromise language that rejected the "shall-not-be-required" language that Mr. Sheehan had drafted and replaced it with a "material factor" test that was ultimately enacted into law, and is still embodied in the version of the statute in force now. That material factor test is as follows:

> "[T]he business's chief executive officer, or equivalent officer, shall submit a certification to the [EDA] indicating: (1) that any existing full-time jobs are at risk of leaving the State or being eliminated; (2) that any projected creation or retention, as applicable, of new full-time jobs would not occur but for the provision of tax credits under the program; and (3) that the business's chief executive officer, or equivalent officer, has reviewed the information submitted to the [EDA] and that the representations contained therein are accurate, provided however, that **in satisfaction of the provisions of paragraphs (1) and (2) of this subsection, the certification**

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added in 2014 statutory amendments. Because the current discussion concerns EOA 2013's amendments, which did not yet apply to Atlantic City, we omit that language here.

[58] Exhibit 4.

[59] Exhibit 4.

[60] Exhibit 5.

[61] Exhibit 5.

[62] *See* Exhibits 6, 7, and 8.

> **with respect to a project in [Camden[63]] . . . shall indicate that the provision of tax credits under the program is a material factor in the business decision to make a capital investment and locate in [Camden]** . . . ."

(Emphasis added).[64]

Thus, the statute provides that, for projects in Camden to be eligible for tax incentives, the company must be facing a "business decision" concerning where to "locate." One option must be Camden, and the provision of tax incentives must be a "material factor" in the company's decision to locate there. However, the statutory text *does not specify one way or the other* whether the "business decision" concerning the company's location (a) must be between Camden versus an out-of-state location or (b) may be between Camden versus another New Jersey location. No court has yet had occasion to interpret this clause and resolve this statutory ambiguity concerning whether tax incentives are available for intra-state relocations to Camden when no potential out-of-state relocation is considered. From the Task Force's perspective, the former interpretation—that is, that tax incentives for projects relocating to Camden, like tax incentives for projects relocating elsewhere, are available only if the company is considering a potential out-of-state location—is likely the better interpretation. This is so for at least two reasons. First, the New Jersey Supreme Court has repeatedly taught that "the furtherance of legislative purpose is the key to the interpretation of any statute,"[65] and here, the Grow NJ statute expressly states that a purpose of the program is to "preserve jobs that currently exist in New Jersey but which are in danger of being relocated outside of the State."[66] The statute does *not* say that its purpose is to incentivize the relocation of jobs to Camden from elsewhere in New Jersey, even if those jobs are not at risk of

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[63] The statutory text that is replaced here with the bracketed "Camden" notation for ease of readability is the following: "a Garden State Growth Zone that qualifies under the 'Municipal Rehabilitation and Economic Recovery Act,' P.L.2002, c. 43 (C.52:27BBB-1 et al.)." Camden is the only municipality that fits that definition, as it is "the only municipality affected by the provisions of the [Municipal Rehabilitation and Economic Recovery Act]." Fiscal Impact Statement for Assembly Bill No. 4375 (Jan. 4, 2010), https://www.njleg.state.nj.us/2008/Bills/A4500/4375_S1.HTM.

[64] N.J. Stat. § 34:1B-244(d).

[65] *GE Solid State, Inc. v. Dir., Div. of Taxation*, 132 N.J. 298, 308 (1993). *See also, e.g.*, *In re Young*, 202 N.J. 50, 64 (2010) (explaining that statutory interpretation must be intended to "effectuate the fundamental purpose for which the legislation was enacted").

[66] N.J. Stat. § 34:1B-244(a).

leaving the State. It would further the statute's express purpose, therefore, to construe the out-of-state requirement that is applicable to projects in the rest of the State to also apply to Camden.[67] Second, if the statute were to be interpreted as intended to incentivize the relocation of jobs to Camden from other parts of New Jersey, a question would arise as to whether the statute would be unconstitutional because it would favor Camden over other parts of the State and, as such, arguably be an impermissible "private, special or local law."[68] Statutory interpretations that avoid such serious constitutional questions are typically favored.[69] For these reasons,[70] if a New Jersey court

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[67] *Cf. Murray v. Plainfield Rescue Squad*, 210 N.J. 581, 592 (2012) ("We do not view the statutory words in isolation but in context with related provisions so as to give sense to the legislation as a whole.").

[68] *See* N.J. Const., art. IV, § VII, ¶ 7 ("No general law shall embrace any provision of a private, special or local character.") and ¶ 9(6) ("The Legislature shall not pass any private, special or local laws . . . [r]elating to taxation or exemption therefrom."); *Mooney v. Bd. of Chosen Freeholders of Atl. Cty.*, 122 N.J. Super. 151, 154 (Law. Div.), *aff'd*, 125 N.J. Super. 271 (App. Div. 1973) ("[L]ocal and special laws rest on a false or deficient classification in that . . . they create preference and establish inequalities; they apply to persons, things or places possessed of certain qualities or situations, and exclude from their effect other persons, things or places which are not dissimilar in these respects.'") (internal quotation marks and citation omitted). While the Legislature may in some cases adopt special laws if there is prior public notice (¶ 8), the prohibition in ¶ 9(6) against special laws "[r]elating to taxation or exemption therefrom" is absolute.

[69] *See, e.g.*, *Silverman v. Berkson*, 141 N.J. 412, 417 (1995) ("Unless compelled to do otherwise, courts seek to avoid a statutory interpretation that might give rise to serious constitutional questions.").

[70] Additionally, it is also notable that, whether the EDA is applying the "material factor" test that is applicable to Camden or the "but for" test that is applicable to the rest of the State, in both cases the statute directs the EDA to consider the same evidence concerning the company's potential relocation sites: "When considering an application involving intra-State job transfers, the [EDA] shall require the business to submit the following information as part of its application: a full economic analysis of all locations under consideration by the business; all lease agreements, ownership documents, or substantially similar documentation for the business's current in-State locations; and all lease agreements, ownership documents, or substantially similar documentation for **the potential out-of-State location alternatives**, to the extent they exist. Based on this information, and any other information deemed relevant by the [EDA], the [EDA] shall independently verify and confirm, by way of making a factual finding by separate vote of the [EDA]'s board, the business's assertion that the jobs are actually at risk of leaving the State, and as to the date or dates at which the [EDA] expects that those jobs would actually leave the State, or, with respect to projects located in [Camden] . . ., the business's assertion that the provision of tax

were to construe this "material factor" provision, the Task Force believes the court would more likely than not conclude that an out-of-state location is required for projects in Camden.[71] Putting our view aside, whatever the Legislature intended, any representations Grow NJ applicants made to the EDA concerning their potential out-of-state relocation were required to be truthful, so falsely stating that jobs were at risk of leaving the State and, accordingly, that an out-of-state alternative was under consideration would be highly problematic.[72]

In any event, whether or not a risk of an out-of-state relocation is strictly required under the statute for projects in Camden, it is indisputable, based on provisions of the Grow NJ Act and EOA 2013 separate and apart from those discussed here, that whether or not such an out-of-state relocation is contemplated is a critical factor bearing upon the potential size of any award. This is because of Grow NJ's "net benefits" requirement, which mandates that every Grow NJ award be anticipated to result in a net benefit to the State in terms of new tax revenue.[73] For companies relocating existing jobs from somewhere within New Jersey to Camden, those jobs create no new "benefit" to the State, since the "benefits" test is state wide and those jobs would yield no new tax

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credits under the program is a material factor in the business's decision to make a capital investment and locate in [Camden] . . . before a business may be awarded any tax credits under this section." N.J. Stat. § 34:1B-244(d) (emphasis added). If a potential out-of-state alternative location were not required for projects in Camden, it is difficult to understand why the statute directs the EDA to consider evidence of the company's "potential out-of-state location alternatives" ("to the extent they exist") in the same manner as if EDA were considering a project outside Camden, where there is no question that an out-of-state location alternative is required.

[71] The "material factor" provision applicable to Camden, in the Task Force's view, is likely best understood as intended to reduce the required showing for the at-risk nature of the jobs: outside Camden, the CEO has to certify that but for the tax incentives jobs would leave the State (that is, the tax incentives are a determinative factor in the company's decision); by contrast, in Camden, the CEO has to certify that the tax incentives are a material factor in locating the jobs in Camden rather than in another state (that is, the tax incentives are an important factor in the company's decision but are not necessarily determinative).

[72] *See* N.J. Stat. § 34:1B-244(d) (requiring an applicant's CEO or other equivalent officer to certify that he or she "has reviewed the information submitted to the [EDA] and that the representations contained therein are accurate"). For criminal penalties under New Jersey law potentially applicable to misrepresentations in connection with Grow NJ applications, *see* N.J. Stat. §§ 41:3-1 (perjury), 2C:28-2 (false swearing), 2C:28-3 (unsworn falsification), 2C:21-3(b) (fraud relating to public records), 2C:20-4 (theft by deception), 2C:21-7(h) (deceptive business practices).

[73] *See* N.J. Stat. § 34:1B-244(a)(3) (requiring Grow NJ awards to "yield a net positive benefit to the State").

revenue.[74] Put another way, New Jersey accrues tax revenue from those jobs whether or not they are relocated, since in either case they are in the State. Based on this principle, when in-state jobs are relocated to Camden and no potential out-of-state alternative is contemplated, the "benefit" calculation is minimal, and the potential tax incentive award must be reduced as a result.[75] Thus, if a company falsely certified that its jobs were "at risk" of leaving the State—when they were not at risk—such a representation would likely affect the size of the company's potential award, and, as such, would surely be material.[76]

We hasten to note that the above discussion relates to the Grow NJ statute itself—not to the EDA's administration of the law, which is covered later in this First Report. Here, the Task Force notes that with respect to the "material factor" provision of the statute, there is a notable ambiguity, which, as shown by the evidence above, may have been by design—as a compromise between, on the one hand, those parties who advocated for the statute to expressly provide that a risk of out-of-state relocation "shall not be required" for projects in Camden, and, on the other hand, those parties who advocated for the statute to require a showing that jobs were at risk of out-of-state relocation.[77]

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[74] This principle, which is inherent in the notion of a state-wide "benefits" test, is expressly set out in EDA's regulations for Grow NJ, which provide in pertinent part: "Retained employees in a project in [Camden] . . . shall not be included [in the benefits calculation] unless the business demonstrates that the award of tax credits will be a material factor to retain the employees **in the State** . . . ." N.J. Admin. Code § 19:31-18.7(c) (emphasis added).

[75] This issue is discussed further below, in Section V(C)(2)(b) of this First Report.

[76] As EDA's former President and Chief Operating Officer Tim Lizura explained at the Task Force's May 2, 2019 public hearing, "the net benefit test was a statewide test, and that would suggest, or would then require that the jobs would be at risk of leaving New Jersey in order to include [the] economic impact of those jobs under the net benefit test. If there was not a risk of leaving the state, we would include all the other drivers of the net benefit test except the economic activity from the employees, which is the largest driver of the economic output." Hr'g Tr. (May 2, 2019) at 262:8-18).

[77] In 2014, this provision of the Grow NJ Act was again amended to provide that Atlantic City would be treated in the same manner as Camden. Therefore, under the current version of the statute, companies may be eligible for Grow NJ benefits when the tax incentives are a "material factor" in the company's decision to locate in either Camden or Atlantic City. The statutory ambiguity discussed in this section with respect to Camden applies likewise with respect to Atlantic City.

2. Influence by Special Interests in EDA's Implementing Regulations for Grow NJ

After EOA 2013 was enacted in September of 2013, it fell to the EDA to promulgate regulations to implement the law's amendments to the Grow NJ program. As described previously, New Jersey law required the EDA to use a "notice-and-comment" process in connection with its issuance of such regulations—that is, to provide public notice of the regulations it was considering and to receive and consider comments from interested members of the public in response to such proposals. However, the Task Force has received information and documents that appear to show that—before the EDA publicly announced any proposed regulations—Kevin Sheehan of Parker McCay privately lobbied the agency to adopt provisions favorable to the firm's clients. At least one of these requests was incorporated in the EDA's first publicly proposed regulations, which the agency announced on January 6, 2014.

Grow NJ, as previously noted, generally excludes retail businesses from eligibility for tax incentives.[78] Parker McCay represented The Cooper Health System—the parent of Cooper University Hospital in Camden—in connection with its Grow NJ application. If the hospital were to be deemed a retail business, it would be ineligible for tax incentives under the statute. (From a policy perspective this exclusion is sensible, since a retail business—especially a hospital dedicated to serving a local community—is unlikely to make a business decision to move out of state absent tax incentives.) On December 10, 2013, Mr. Sheehan sent an email to the EDA's then President and Chief Operating Officer Tim Lizura: "[I]n reviewing the qualified business facility definition in the [regulations] that we discussed, my suggestion would be to add a sentence at the end of the definition to say: a university research hospital shall not be considered final point of sale retail. Thanks."[79] The EDA incorporated the request into its initial January 6, 2014 regulatory proposal as well as its final regulations adopted on December 15, 2014, and the provision remains in effect in the regulations in force now.[80] The Cooper Health System—deemed eligible for tax incentives pursuant to this regulation—would later be approved by the EDA for an approximately $40 million award. Meanwhile, the EDA does not appear to have disclosed that, outside of the public notice-

[78] *See* N.J. Stat. § 34:1B-243 (generally excluding "business[es] that [are] . . . engaged in final point of sale retail" from the definition of the "qualified business facilit[ies]" that are eligible for tax incentives).
[79] Exhibit 9.
[80] *See* N.J. Admin. Code § 19:31-18.2 (in the "qualified business facility" definition, carving out "university research hospital[s]" from the scope of ineligible "business[es] . . . engaged in final point of sale retail business").

and-comment period, its regulations had been amended in response to the request of a private party, apparently to assist a specific client.

3. Inadequate Statutory Requirements to Ensure Job Requirements Are Consistently Met

The current statutory requirements and EDA regulations governing reporting requirements and required annual jobs reports for companies to receive awards are inadequate to ensure that companies are consistently creating or retaining the required number of jobs and achieving the aims of Grow NJ. Based on the language of the regulations, a company need only submit an annual report, certified by the company's chief financial officer or equivalent, showing that it created or retained the required number of jobs for the last tax year before the credit amount is approved and issued. There is no additional certification requirement to ensure that these jobs are maintained to further the aims of economic growth and job creation. In essence, a company could create the number of jobs required in its agreement, certify, receive the first tenth of its overall credit, and then eliminate or fail to retain the required number of jobs immediately after receiving its credit while still retaining the award for the full year.

Indeed, in one instance, World Business Lenders, LLC ("WBL"), moved to New Jersey from another state in July 2016. WBL's award was contingent on its promise to bring a specific number of jobs into New Jersey, and its Incentive Agreement provided that it would remain in New Jersey for fifteen years. By October 2016, WBL had hired enough employees to meet the employment numbers set forth in its Incentive Agreement. WBL's submission to the EDA showed that it had satisfied the employment numbers set forth in its Incentive Agreement in October 2016. In the beginning of December 2016, the EDA certified to the Division of Taxation that the company was eligible for its overall tax credit certificate of approximately $16 million. At the beginning of January 2017, however, the company laid off a significant number of its employees, sending its job numbers well below the number required to continue to qualify for a tax-incentive grant. The EDA learned of the mass layoffs through news reports. The company subsequently submitted a report showing that it had met the required employment numbers for November and December 2016. Therefore, despite having seen indications that the company had terminated its employees after satisfying the requirements to receive its tax credit for 2016, the EDA asked the Division of Taxation to issue the company the first tenth of its overall credit, amounting to approximately $1.6 million. The company received this award even though it had been located in New Jersey for only six months, had submitted only three months of employment data, and had laid off a significant number of employees shortly after qualifying for the first year of its award.

The Task Force is still investigating this issue and has not reached any conclusion regarding the company's conduct or intent in connection with its application, and the company has maintained

that it acted entirely in compliance with Grow NJ's requirements. Regardless, the Grow NJ regulations did not specifically require that the company prove that it maintained the agreed-upon number of jobs for a full twelve-months, did not require that it be located in New Jersey for a full year in order to receive a full year's award, and did not have a mechanism requiring that a company maintain a minimum number of jobs after the award was issued in order to retain its award. The company was not certified to receive the second tenth of its award in 2017 because it did not employ the required number of employees for that tax year.

V. EDA: THE ADMINISTRATION OF THE TAX-INCENTIVE PROGRAMS

In its examination of the EDA's implementation and administration of the Programs, the Task Force set out to: (1) further examine and assess the EDA's process and control failures, including in the EDA application-approval process, from pre-application through approval and certification; (2) evaluate the effectiveness of existing EDA policies and procedures relating to the roles and responsibilities of individual EDA officers, EDA staff training, and EDA officers' understanding of the purpose, implementation, requirements, and administration of the Grow NJ and ERG tax incentive programs; (3) assess the administration of the tax incentive programs and subsequent monitoring of grant recipients; and (4) determine whether or not external or internal pressures were brought to bear on the EDA in connection with its application approval, compliance, monitoring, and certification processes, as well as its rulemaking processes relating to the Programs.

A. Overview of the Application-Approval Process

In order to evaluate any problems relating to the Programs' design, implementation, or administration, the Task Force had to begin with an understanding of the relevant statutes and of the EDA's tax-incentive application and administration process, from application through the annual award of tax-incentive grants. As noted previously, the Task Force focused primarily on Grow NJ during the initial phase of its investigation. A high-level overview of the Grow NJ process is below:[81]

1. Pre-Approval Process: Application Review and Board Approval

Companies learn of EDA tax-incentive programs and make initial contact with the EDA through various channels. The EDA receives potential application referrals through a customer care telephone line, through the Business Action Center ("BAC"), which is housed within the New

[81] Although there is significant overlap between the Grow NJ and ERG processes, particularly in the pre-application through approval stages, the differences in the Grow NJ and ERG Program requirements result in divergent approaches to the administration of these Programs. We will provide an overview of the ERG process in a later report.

Jersey Department of State, and through Choose New Jersey, a 501(c)(3) non-profit whose mandate is to act as the marketing arm of the State and attract out-of-state and international businesses to New Jersey. BAC personnel frequently work with EDA officers to attract and obtain program applicants, and the BAC has historically been the biggest driver of application lead referrals to the EDA. Separately, the EDA's Community Development Officers ("CDOs") and Business Development Officers ("BDOs")[82] are also charged with developing business relationships and recruiting potential applicants. Indeed, a BDO's year-end performance is evaluated, in part, on their outreach efforts as well as whether they have met yearly goals in the volume of applications submitted to the EDA. Potential applicants may also directly contact the EDA to obtain information about the Programs. In addition, applicants are often represented by consultants, lawyers, lobbyists, or real-estate agents, and those representatives may also reach out directly to EDA personnel prior to the submission of a tax-incentive application.

Before submitting a Program application, a potential applicant often has an initial meeting or conversation with EDA personnel—typically a BDO—in order to discuss the applicant's business, needs, and Program requirements. Potential applicants occasionally meet with members of the EDA's senior leadership team in addition to or in lieu of meeting with a BDO. Pre-application dialogue between Program applicants and the EDA is not required, but in practice, often precedes formal submission of a company application by weeks or months.

A company formally submits its application through the EDA's electronic application system. At that time, the company pays an application fee and a BDO is assigned to the application. Often, it is the same BDO that worked with the company pre-application. The BDO is responsible for conducting an initial review of the application and assisting the applicant—or "client"—in ensuring that the applicant has submitted all required documentation prior to transmittal of the application file to Underwriting. BDOs must consult their Program Manager and Managing Director for application reviews before the application is submitted to the Underwriting group.

During the underwriting phase, underwriters are responsible for conducting due diligence and vetting an application to ensure it sufficiently meets all Program requirements and to address any outstanding concerns. Although underwriters bear the primary responsibility for conducting due diligence and follow-up with applicants, they often include the assigned BDO in correspondence to the applicant as the face of the relationship. Among other factors, underwriters

[82] These roles and titles within the EDA are now consolidated and currently all Community Development Officers ("CDOs") are now referred to as Business Development Officers ("BDOs"). For the sake of consistency, the Task Force's First Report will refer to both CDOs and BDOs at various times as BDOs.

assess the applicant's submitted cost benefit analysis[83] and conduct the required net benefits analysis.[84] Underwriters are also responsible for drafting project summary memoranda, which are presented during "Project Review Meetings." At those meetings, the assigned underwriter presents the application to EDA personnel and members of the New Jersey Attorney General's Office. The EDA staff discusses and raises any issues or concerns related to the application, which the assigned underwriter answers or addresses directly with the applicant as follow-up.

After the Project Review meeting, the underwriter presents the application to the Incentive Committee of the EDA Board, after which the Incentive Committee either does or does not recommend an application for approval by the Board. Although an application may proceed to Board review without a recommendation by the Incentive Committee, more often, the applicant will withdraw its application if the Incentive Committee does not recommend approval.

If the Incentive Committee recommends that the EDA Board approve an application, the application is presented during an EDA Board meeting for approval. EDA Board meetings are conducted on a regular basis and are open to the public. Prior to the Board Meeting, EDA personnel provides the EDA Board with memoranda detailing the project applications that are subject to review and approval at the upcoming meeting. If the Board votes on an application and it is approved, the Governor has ten days to veto the approval. Board-approved projects are required to pay a non-refundable fee of 0.5% of the approved award amount, capped between $50,000 to $500,000, prior to final approval.

Depending on the complexity of the application, the full review process may last a number of months. EDA employees said that, in the early period of Grow NJ's administration, they often processed applications in one or two months, but now, although they can process more complete applications in as little as two months, it could take several months to a year to process others.

[83] The EDA requires Grow NJ applicants to submit "Cost Benefit Analysis" (or "CBA") forms with their applications. These forms compare the costs of the applicant's proposed New Jersey site and the applicant's alternative site. The purpose of the form is to demonstrate that the applicant's proposed New Jersey location is more expensive than the alternative location—and thus, tax incentives are required to offset the higher costs.

[84] As discussed in further detail herein, the EDA conducts a net benefit analysis ("NBA") to determine that every Grow NJ award is anticipated to "yield a net positive benefit to the State" of at least 110%, with the exception of Camden, where the requirement is 100%.

2. Post-Approval Process: Closing Services, Monitoring, and Certification

After Board approval, the EDA executes an approval letter and the project moves to Closing Services, during which a conditions of approval officer monitors the project to ensure that any conditions imposed on the project have been met. The conditions of approval, outlined in the approval letter, may include, for example, site plan approval, site control, committed project financing, eligible minimum capital investments, and updated status reports. Once the conditions have been met, Closing Services prepares an Incentive Agreement in consultation with the New Jersey Attorney General's Office. Once the Incentive Agreement is executed, a closing date is set. After closing, the company may receive a tax award the following year, provided it can certify that the project has met all the conditions of the Incentive Agreement in the prior year.

Once the closing process is complete and an Incentive Agreement has been executed, the project is transferred to the Portfolio Management and Compliance[85] group for monitoring and annual certification. Projects have three years to certify that they have met all the conditions and requirements of the Program and Incentive Agreement, with the possibility of up to two six-month extensions of time. Once a project certifies to the EDA that it has met all conditions and requirements of the Program and Incentive Agreement, the EDA's Portfolio Management and Compliance group then certifies the same to the Department of Treasury. The Treasury Department then issues the tax-incentive award. Projects are required to certify their compliance on an annual basis to obtain their tax-incentive award, which is distributed evenly in increments of 1/10th of the total award, across a ten-year period.

If the Portfolio Management and Compliance Group determines that a project is non-compliant with its Incentive Agreement or the Program requirements, the tax incentive award is subject to potential forfeiture, recapture, or recoupment.

B. EDA-Related Litigation

In the early stages of the Task Force's investigation, the Task Force discovered a whistleblower complaint, *Veyis Sucsuz v. New Jersey Economic Development Authority, John J. Rosenfeld, Michele Brown, Fred Cole, Anne Cardello, and John Does 1-10*,[86] filed on May 11, 2015 in New Jersey Superior Court, Mercer County, by a former EDA underwriter, Veyis "David" Sucsuz. Mr. Sucsuz was employed at the EDA for over ten years until his termination in September 2014. He began at the EDA as a legal assistant in lending services and later became an underwriter,

[85] The Portfolio Management and Compliance Group was reorganized and renamed in late 2018 and previously existed as the Finance & Development – Post-Closing Financial Services Group.
[86] No. MER-L-001083-15 (Super Ct., Mercer Cty. filed May 11, 2015).

responsible for the review and processing of Grow NJ and ERG incentive award applications, among other incentive programs.

In his complaint, Mr. Sucsuz alleged employment discrimination claims in addition to claims that he witnessed misconduct in connection with Grow NJ and ERG incentive program approvals, and that he was fired when he resisted directives from senior management to alter or promote applications that should have otherwise been rejected. Among other claims of misconduct by both applicant companies and individuals within the EDA, Mr. Sucsuz alleged, both in his complaint and under oath in deposition testimony, that certain applicants to the Grow NJ Program provided fabricated or "phantom" out-of-state locations.[87] Mr. Sucsuz alleged that in some instances, applicants fabricated an alternate out-of-state location to conceal a pre-existing intention to locate or expand in New Jersey. Mr. Sucsuz alleged that such applicants were nevertheless approved for Grow NJ tax incentive grants. Mr. Sucsuz further alleged that he was directed by his supervisor to alter or manipulate cost inputs for the cost benefit analysis or net benefit test in order to qualify applicants that would not have otherwise qualified with the cost inputs provided. He alleged that when he refused to alter the cost inputs, his supervisor would do it himself.

The case ultimately went to jury trial, which began on April 30, 2018 and lasted eight days. The jury announced its verdict on May 10, 2018. While Mr. Sucsuz did not ultimately prevail on his retaliation claim, the jury unanimously found that Mr. Sucsuz had a reasonable belief that the EDA violated a law, rule or regulation in the processing of application for loans, grants and tax incentives, and had proven by a preponderance of the evidence that he performed a "whistleblowing" activity as defined by the New Jersey Conscientious Employee Protection Act ("CEPA").

Despite testimony at the May 2, 2019 hearing by a Senior Vice President of Operations for the EDA that Mr. Sucsuz's allegations "identif[ied] potential fraud or misrepresentation in the application[s] submitted to the EDA for tax incentive programs" and also "focused on the EDA's review and approval of tax incentive awards,"[88] the EDA took no action to investigate any of Mr. Sucsuz's whistleblower allegations. While the Task Force has taken no position on the accuracy

[87] As discussed in Section V(C)(2)(b) of this First Report, for incentivized projects in most parts of New Jersey, it is indisputable that, for a company to receive Grow NJ tax incentives for existing jobs in New Jersey, those jobs must be at risk of leaving the state or being eliminated. Thus, where jobs are not at risk of elimination, applicants must demonstrate an alternate out-of-state location. In any event, any proposed alternate out-of-state locations must be legitimate and comparable.
[88] Hr'g Tr. (May 2, 2019) at 58:18-59:2.

or truthfulness of Mr. Sucsuz's allegations, the Task Force has taken steps to investigate Mr. Sucsuz's various claims, which will be detailed in a later report.[89]

We also found that the EDA lacks the proper internal controls with respect to the processing and review of internal whistleblower complaints. During the second day of the Task Force's public hearing, we heard testimony from a Senior Vice President of Operations at the EDA, Fred Cole, who admitted to a failure within the EDA to investigate a former EDA underwriter's whistleblower complaints regarding various failures within the EDA with respect to tax incentive applications. At the May 2, 2019 public hearing, Mr. Cole acknowledged that the whistleblower allegations implicated conduct related to the EDA's tax-incentive programs, specifically that the allegations "identif[ied] potential fraud or misrepresentation in the application submitted to the EDA for tax incentive awards" and "also focused on the EDA's review and approval of tax incentive awards."[90] Yet, Mr. Cole testified that neither he nor anyone else at the EDA conducted an internal investigation into the allegations of fraud and misconduct. The Task Force takes no position on the accuracy or truthfulness of the whistleblower allegations. However, the EDA's processes failed when it took no steps to investigate the whistleblower claims which, as Mr. Cole admitted, could have had merit and, if true, could have carried significant financial ramifications.

In addition to the EDA's failure to conduct an internal investigation into the former EDA employee's whistleblower allegations, the EDA further failed to disclose this litigation to the Office of the Comptroller during its 2018 audit despite an affirmative obligation to disclose pending claims and litigation against the EDA. Indeed, the EDA's failure to disclose occurred despite the fact that members of its senior leadership team were deposed shortly before and during the beginning stages of the Comptroller's audit in late 2017 and early 2018 and despite the fact that the trial took place in April 2018 while the Comptroller's audit was ongoing. In fact, at the conclusion of the Comptroller's audit on January 3, 2019, Mr. Cole signed a management representation letter to the Comptroller's office, representing that, for the ten years prior and through the close of the Comptroller's audit, the EDA was not aware of any allegations of fraud or suspected fraud affecting

[89] During its investigation, the Task Force made several attempts to contact Mr. Sucsuz for testimony but was ultimately unsuccessful. The Task Force first attempted to obtain Mr. Sucsuz's voluntary testimony by contacting him through his former counsel; however, when Mr. Sucsuz failed to return the Task Force's requests to meet, the Task Force requested the issuance of a subpoena from Professor Chen. After several attempts to serve Mr. Sucsuz, the Task Force ultimately effectuated proper service of two subpoenas for both deposition and public hearing testimony on Mr. Sucsuz. He nevertheless failed to appear at both the date set for his deposition and the May 2, 2019 public hearing of the Task Force.

[90] Hr'g Tr. (May 2, 2019) at 58:18-59:2.

the EDA received in communications from employees or former employees and had disclosed all details concerning any pending claims, assessments and litigation against the EDA of which the EDA was aware and which would have a significant impact on financial operations.[91] EDA representatives are unable to offer an explanation for their failure to disclose the whistleblower litigation and a basis for its false representations to the Comptroller that it had, in fact, disclosed all relevant and pending claims and litigation.

C. Initial Findings

1. Lack of Written Policies and/or Procedures

The Task Force sought to review all of the EDA's written policies and procedures relating to the Programs. In seeking that information, the Task Force discovered that in the immediate years following the passage of EOA 2013, from approximately 2013 through 2017, the EDA had virtually no written policies or procedures regarding its process for reviewing and approving applications.[92] Although some practices and procedures have recently been memorialized in written memoranda to senior leadership and the Board, the EDA continues to lack a sufficient set of formal written policies and procedures to disseminate to personnel and ensure a consistent application review and approval processes.

Furthermore, to the extent policies have been memorialized by the EDA, we do not believe, based on the inconsistency of responses received from EDA employees when asked about such documents, that those policy documents have been consistently and comprehensively distributed amongst EDA personnel. For example, several BDOs were unaware of existing BDO checklists or flowcharts when shown during interviews. Indeed, most of the current EDA employees interviewed did not recall reviewing or receiving a training manual, memorandum, or set of written policies relating to the EDA tax incentive program approval process.

The EDA also lacks sufficient written policies detailing the roles and responsibilities of specific positions within the EDA. The Task Force received a "Grow NJ Processing Steps" chart, which was finalized in April 2015, identifying the EDA employee responsible for each step in the Grow NJ application process. However, several of the EDA employees that the Task Force interviewed had never seen this document. Moreover, the chart does not provide detail or guidance

[91] Exhibit 10.

[92] The EDA does have a few written policies, including on the net benefit test and the factors (including the possibility an out-of-state location) affecting that test.

on how to execute each step outlined and therefore does not provide guidance as to the roles and responsibilities for personnel.

The Task Force observed that BDOs and underwriters rely primarily on basic "checklists" implemented in 2014, which set forth the documentation required for a complete application. These checklists, however, do not provide guidance on how EDA personnel are expected to review or analyze required documentation, which would be more helpful to the guide the process. Rather, they require only that the BDOs and underwriters confirm that the Program applicant submitted required documentation before the application was transmitted to the Underwriting group. As indicated, they do not offer guidance on what is considered adequate documentation. It appears, moreover, that at least some EDA employees believed the documents listed on the checklists were not all required to proceed with an application: a senior underwriter responsible for ERG applications described the ERG checklist, which identified "Items required prior to submission to underwriting" as including both required items and items that would be "nice to have." That same underwriter told us that, for example, the Chief Executive Officer ("CEO") Certification is a "nice to have" item from this checklist, despite the clear regulatory requirement for a CEO Certification under the ERG Act.[93]

2. Failure to Comprehensively Train EDA Staff

The effect of the EDA's lack of written policies and procedures was exacerbated by its failure to comprehensively train its staff while onboarding and during promotions and role transfers, or on an ongoing basis. The EDA did not comprehensively train its staff regarding: (1) the requirements and responsibilities of roles within the EDA; (2) the Programs' requirements; (3) amendments to the Programs' requirements; and (4) the EDA's implementation of the Programs' requirements. Indeed, each of the employees the Task Force interviewed confirmed that he or she did not receive any formal training when onboarded to the EDA; they also did not receive any formal training following a promotion or transfer to a new role. Rather, training was "on the job" and involved shadowing senior management and/or colleagues. In some cases, employees stated that they were provided with the relevant statutes and instructed to "familiarize themselves" with the provisions.

EDA employees also did not receive comprehensive training regarding the statutory requirements of the Programs and the Programs' subsequent amendments. Some senior EDA employees recalled that, after the EOA 2013 was passed, employees attended a training seminar or

[93] The regulations governing ERG expressly require, as part of the Program's application submission requirements, a "written certification by the chief executive officer, or equivalent officer for North American operations." N.J. Admin. Code § 19:31-4.4.

seminars with the New Jersey Attorney General's Office that provided an overview of the Programs and guidelines. However, all the interviewees indicated that the EDA did not provide subsequent trainings when new statutory amendments were passed. Although some EDA personnel recalled that senior leadership briefed EDA personnel regarding statutory and regulatory amendments and changes to the EDA's tax-incentive Programs during Pipeline Meetings, others indicated that although they might have received a copy of a regulatory amendment and had an opportunity to ask questions, they did not recall receiving formal notice or follow-up training when regulatory changes took place. Indeed, two senior underwriters stated that, when statutory or regulatory requirements were amended, underwriters simply reviewed the amended language and learned how to enforce the new amendments "on the job."

Furthermore, EDA personnel were not adequately trained to review and analyze information and documentary evidence applicants were required to submit. For example, employees did not receive training on how to review and identify problems with lease agreements, letters of intent, or requests for proposals that are consistently submitted with project applications to support proposed project locations. EDA employees generally seemed completely unaware of the kinds of documents a business would generate if it were seriously considering a move of its facilities to another state, and some appeared to be reluctant to "ask too many questions."[94] We discuss some examples of the impact of those failures in Section V(C)(4) of this First Report below.

Finally, given the critical importance of screening applications for potential misconduct, some training in fraud detection is critical for program underwriters. Not only did the Task Force determine that the EDA provided no such training at any time, up to the present, many EDA employees we interviewed expressed the view that their vetting required them to take information at "face value."

[94] At the Task Force's May 2, 2019 public hearing, John Boyd, a principal at a corporate site selection firm in New Jersey, testified that for a relocation of several hundred office employees, companies typically conduct a serious analysis to select the ideal location. The process often includes meetings with employees from multiple departments (including accounting, legal, human resources, and communications), memoranda and reports, and multiple site visits. Mr. Boyd testified at the Task Force's hearing that he "agree[d]" that, to determine whether a company was sincere in its considerations of a potential relocation site, there should be "a lot of documentation of [the company's] deliberations" that "the company should be able to produce." *See* Hr'g Tr. (May 2, 2019) at 101:9-107:17.

a) Inconsistent Understanding of Roles and Responsibilities

The EDA's failure to comprehensively train its staff has resulted in an inconsistent understanding of the roles and responsibilities of specific positions within the EDA. The Task Force observed that among the BDOs we interviewed, there was a broad range in the understanding of their responsibilities. All BDOs interviewed understood their role as business developers and advocates for the applicants or "clients." However, several BDOs expressed the belief that their review of applications did not require independent verification of information and required only "perusing the application" for "red flags" or "glaring errors" that would potentially disqualify an applicant. Their supervisors, on the other hand, expected their officers to also conduct preliminary due diligence on the submitted documentation and conduct independent diligence in the form of internet-based searches on the applicant, including the business, its senior leadership, and the applicant's exposure to legal risks. Unfortunately, because of a complete lack of policies concerning how to conduct internet and other public searches for such information and what to look for, the quality of such diligence varied from BDO to BDO, and application to application. Indeed, as noted above, we found important information through simple internet-based searches which BDOs missed completely, including potentially disqualifying information.[95] BDO supervisors expected BDOs to review application materials and address as many potential issues or questions in order to present a complete application to Underwriting. Although some BDOs believed their role was to both assist and scrutinize the applicant, all the BDOs understood that it was primarily the underwriter's responsibility to conduct due diligence, investigate, and verify information provided by the applicant.

Nearly all of the underwriters interviewed understood their responsibility to conduct due diligence and investigate and verify information applicants provided; however, at least one senior underwriter understood the role to be that of a "processor" who "checks off the boxes." The same underwriter believed that the underwriters needed to review applications to ensure the required documentation and materials had been submitted but did not need to assess whether applicants' representations were truthful. This approach is inconsistent with the underwriters' gatekeeping role: the underwriters are the primary means to ensuring that applications comply with the Programs' requirements.

[95] However, the Task Force did observe other instances where BDOs did perform sufficient due diligence and identified one company's failure to disclose on its application potentially relevant lawsuits. The EDA eventually resolved the initial non-disclosure with the company.

b) Inconsistent Understanding of the Program Requirements Concerning Camden and Atlantic City

The EDA personnel interviewed thus far have, in some important areas, exhibited inconsistent, incomplete, or inaccurate understandings of certain Program requirements, specifically with respect to (a) the circumstances in which Grow NJ applicants are required to demonstrate a risk that their jobs may be relocated outside of New Jersey and (b) the effect such a relocation risk may have on the terms of any tax incentives award.

As discussed in Section IV(A)(1)(e) of this First Report, the Grow NJ Act expressly states that a "purpose of the [Grow NJ] program is . . . to preserve jobs that currently exist in New Jersey but which are in danger of being relocated outside of the State."[96] In most cases, Grow NJ applicants are indisputably required to demonstrate to the EDA, in order to qualify for tax incentives, that they are considering an out-of-state relocation. However, because of an ambiguity in the statute's text, it is arguable that tax incentives may be available (although only in a reduced amount, for reasons discussed below) for relocating existing New Jersey jobs to Camden or Atlantic City, even when no potential out-of-state relocation is contemplated.[97] The EDA has on one occasion approved tax incentives for a company that relocated from within New Jersey to Atlantic City even though that company was not contemplating a possible out-of-state relocation—thus, the company was approved for tax incentives even though its jobs were not "in danger of being relocated outside of the State."

Whether or not an out-of-state relocation is strictly required under the statute for projects in Camden or Atlantic City to receive tax incentives, it is indisputable, based on a separate provision of statute, that whether or not such an out-of-state relocation is contemplated is a critical factor bearing on, at a minimum, the potential size of any award. As discussed previously, the Grow NJ Act requires that every tax incentive award be anticipated to "yield a net positive benefit to the State."[98] In this context, the "benefit to the State" means tax revenues collectible by the State as a result of the fruition of the project for which the tax incentives were awarded—tax revenue, that is, that the State would not collect in the absence of the tax incentives. Under the statute, no tax incentive award under the Grow NJ program may be larger than the anticipated benefit to the State. If the anticipated benefit is smaller than the award that for which the applicant would otherwise be

[96] N.J. Stat. § 34:1B-244(a).
[97] As discussed previously, EOA 2013 introduced this provision with respect to Camden, and the statute was amended again in 2014 to have the provision apply to Atlantic City as well.
[98] N.J. Stat. § 34:1B-244(a)(3).

eligible, then the award must be reduced. For example, if an applicant would otherwise be eligible for a $50 million award for a project in Camden, but the EDA anticipates that the project will yield only $10 million in resultant tax revenue to the State, then the applicant's award must be reduced to $10 million only rather than $50 million.

A company's certification that jobs are at risk of leaving the State—and thus that it is considering an out-of-state alternative—may have a critical and material effect on the net benefit test, particularly with respect to income taxes that accrue from employment. The net benefit test required by the Grow NJ Act is a statewide test that assesses benefits to the State as a whole—rather than to a particular locality within the State. When an applicant's jobs are already in New Jersey, any income taxes related to those jobs are factored into the net benefits calculation only if the jobs are at risk of being relocated out of state. There, the provision of tax incentives, which keeps the jobs in the State, provides a clear benefit to New Jersey. By contrast, if an applicant is not considering moving out of state, and a job will exist somewhere in New Jersey in any event, there can be no benefit to the State as a whole. Thus, the EDA's implementing regulations for Grow NJ provide that, for projects in Camden and Atlantic City, "[r]etained employees . . . shall not be included [in the net benefits calculation] unless the business demonstrates that the award of tax credits will be a material factor to retain the employees in the State . . . ."[99] This rule is also set forth in several EDA policy documents.

Some EDA employees demonstrated a limited understanding of these issues. At least two EDA employees believed that, as administered by the EDA, projects moving to Camden did have to show jobs were at risk of leaving the State.[100] Some were unclear about whether the possibility of an out-of-state relocation is strictly required as a matter of threshold eligibility (rather than a factor in award size) for projects in Camden or Atlantic City, and did not know whether the EDA had ever processed applications concerning projects in Camden or Atlantic City for which no potential out-of-state relocation was contemplated. Although the existence of a potential out-of-state relocation clearly has an effect on the net benefit test and, therefore, on the size of any potential

[99] N.J. Admin. Code § 19:31-18.7(c).

[100] *See* Hr'g Tr. (May 2, 2019) at 135:9-20 (testimony of David Lawyer, the EDA's managing director of underwriting since May 2017: "Q. And for companies that were, at the time of their application, they were already in New Jersey, does every Grow applicant need to show that the jobs were at risk, as the program was administered, does every applicant have to show that the jobs were at risk of moving out of the state? A. That is my understanding. Q. And that is true even where an application proposes to move jobs intrastate from a city outside of Camden to Camden? A. That is my understanding, yes.").

award, at least one EDA employee misapprehended this rule. Given that the risk of jobs leaving the State is a core element of the Grow NJ program, it is important for all EDA employees responsible for processing Grow NJ programs to fully understand the pertinent issues, and EDA employees should have a firmer understanding of them.

3. Due Diligence Failures

The Task Force has found that the EDA's due diligence practices in connection with review of applications have generally been insufficient. Program applicants are required to make a number of representations in connection with their applications, both about the applicant itself and about the circumstances under which they are seeking tax incentives. Because these representations are critical to determining whether the applicant is eligible for the tax incentives requested, it is important to conduct sufficient due diligence to detect fraud, misrepresentations, or error.

Many EDA employees we interviewed did not believe independent verification of an application's accuracy or truthfulness was warranted because the EDA required an applicant's CEO to certify under penalty of perjury that the representations contained in the application were accurate and that the CEO had taken steps to ensure that the application materials were complete. However, if the answers provided by an applicant are taken at face value, without any effort to cross-corroborate or verify through public sources, applicants could easily present and certify false, misleading, or inaccurate information to the EDA without consequence.

Some EDA employees stated that they conducted internet searches regarding applicants and their senior personnel to identify potential red flags and issues, but it appears that those searches, when conducted at all, were insufficiently broad and failed to identify key information that should have raised red flags or at least warranted follow-up questions to applicants. For example, the Grow NJ application requires applicants to state whether the applicant has ever been debarred by any state or federal governmental department, agency, or instrumentality. Under the EDA's regulations, such a debarment could constitute grounds for the EDA to deny an application for tax incentives.[101] One company, Holtec International, represented in its application—certified by its CEO—that it had no prior history of debarment.[102] In fact, however, Holtec had previously been debarred by the Tennessee Valley Authority, a congressionally chartered corporation of the United States. The EDA then approved Holtec for a $260 million award under Grow NJ. Had the EDA conducted cursory internet research, it could have found that Holtec's answer was inaccurate. Yet EDA

[101] N.J. Admin. Code § 19:30-2.2(a)(1)(10).
[102] *See* Exhibits 11 and 12.

personnel failed to independently uncover Holtec's misrepresentation when it approved Holtec's award, one of the largest tax incentive awards in New Jersey history.[103]

Although Holtec's undisclosed debarment was potentially disqualifying, other examples abound where readily available information—if the EDA had found it—would have at least merited follow-up questions to program applicants. However, even more concerning were examples found where EDA personnel did, in fact, conduct internet searches that yielded red flags, including relevant lawsuits involving the company, but EDA failed to investigate and conduct further due diligence that could have uncovered material misrepresentations. For example, NFI, L.P. ("NFI"), submitted its Grow NJ application on October 24, 2016. It asserted that in exchange for Grow NJ tax incentives, it would continue to employ 670 employees in New Jersey rather than move the jobs to Philadelphia. NFI submitted a chart of affiliates identifying the related companies, which included NFI Industries, Inc., National Freight, Inc., and NFI Interactive Logistics, LLC. As part of its application, NFI was required to answer a series of background questions related to legal matters. The application asked whether the "applicant, any officers or directors of Applicant, or any Affiliates (collectively, the 'Controlled Group') [had] been found guilty, liable or responsible in any Legal Proceeding for any of the following violations or conduct." NFI answered "No" for each listed question, which included offenses indicating a lack of business integrity or honesty, such as fraud, and violations of the governing hours or labor, minimum wage standards, and prevailing wage standards laws. While the EDA may have a timeframe that it considers relevant for legal proceedings, the actual application does not indicate that a company should limit disclosures to a period of five or ten years. Therefore, each company is presumed to have disclosed all legal proceedings relevant to the disclosure questions regardless of whether EDA would find it impactful on a company's eligibility.

The Task Force has reviewed the application and full company file of NFI and found that the EDA was aware of at least three lawsuits related to NFI.[104] In its Grow NJ transmittal form,

[103] Last month, Holtec acknowledged that it did not disclose its prior debarment in its application and sought to amend its application. The EDA has since suspended Holtec's tax-incentive award, pending further investigation.

[104] First, an Equal Employment Opportunity Commission action in which NFI paid $45,000 to settle gender-discrimination allegations about unequal pay; second, a Department of Labor action in which NFI was ordered to pay 350 workers over $1 million in back wages for misclassifying them as exempt from overtime; and third, a Department of Labor action in which NFI was ordered to reinstate a trucker and pay him $276,870 after he alleged he was fired for refusing to make a trip that would have violated federal "hours of service" restrictions.

which is an internal request for application review, an EDA BDO, listed four articles highlighting these three lawsuits under the section "Google Search of Applicants/Owners." Our review of correspondence indicates that on October 24, 2016, the EDA BDO sent an email to Mr. Sheehan of Parker McCay, who represented NFI, asking for an explanation and status of the three cases she found based on her internet search. On October 31, 2016, Mr. Sheehan responded with a brief explanation and stated that NFI disputed each claim but settled "to avoid protracted and costly litigation." The EDA BDO referred the issue and lawsuits to an EDA Senior Legislative Officer. In her correspondence, the EDA BDO highlighted for the EDA Legislative Officer that NFI answered "No" for the legal questions on their application. Based on a review of the correspondence, it appears that the EDA Legislative Officer directed the EDA BDO to request the settlement agreements from Mr. Sheehan and had further communications with Mr. Sheehan regarding details and his initial concerns regarding lawsuits involving NFI.

While the Task Force appreciates that the EDA BDO conducted initial diligence, it believes that further diligence would have unveiled a criminal conviction and guilty plea by affiliate Interactive Logistics, Inc. d/b/a NFI Interactive Logistics, Inc. and at least two additional legal proceedings.[105] The Task Force reviewed publicly available documents indicating that in November 2005, an NFI-related entity, Interactive Logistics, Inc. d/b/a NFI Interactive Logistics, Inc., pled guilty to three counts of wire fraud for defrauding Anheuser-Busch.[106] In addition, the Task Force reviewed publicly available documents related to lawsuits alleging violations of wage and hours laws. The Task Force finds this concerning on numerous grounds. It further highlights potential misrepresentations by NFI, and Sidney Brown, NFI's CEO who certified on its behalf, that all information contained within the company's Grow NJ application was true. Second, it is concerning that—after the EDA questioned Mr. Sheehan and NFI about the discovered lawsuits—neither he nor Brown was forthcoming about the criminal conviction or additional lawsuits, especially those of a nature required to be disclosed on the EDA application. Finally, from an EDA perspective, the Task Force believes that in-depth due diligence would have found the publicly available lawsuits. While the EDA Legislative Officer identified the need to review the settlement agreements in the lawsuits that were found, neither he nor the EDA BDO seemed appropriately concerned that at the crux of the matter, NFI's application contained potential misrepresentations

[105] *Interactive Logistics, Inc. v. Markel Insurance Co.*, No. 08-CV-1834 (D.N.J.); *Brime v. Eckenrode and Interactive Logistics, LLC*, No. 08-CV-0095 (E.D.V.A.) (previously captioned *Brime v. Eckenrode and Interactive Logistics, Inc. t/a National Freight, Inc.*).
[106] *United States v. Interactive Logistics, Inc.*, No. 05-CR-00872 (D.N.J.); *see* Exhibit 13.

and a potentially fraudulent CEO certification. Even more, despite learning this, the EDA approved NFI's application for an approximately $80 million award.

4. Deficiencies in Assessing Applicants' Alternative Relocation Sites

The Task Force has investigated applicants' consideration of locations outside of New Jersey. Because a core goal of the Grow NJ program is "to preserve jobs that currently exist in New Jersey but which are in danger of being relocated outside of the State,"[107] Grow NJ applicants are required to provide information about the locations in New Jersey and other states to which they are considering relocating.[108] The Task Force's investigation to date has found clear deficiencies in the EDA's evaluation of applicant submissions about these alternative sites. In some instances, Grow NJ applicants have made representations about a potential out-of-state alternative site that should have raised serious red flags about whether the applicant genuinely intended to move out of state, but the EDA failed to take any action to investigate the issue.

The Task Force has examined the EDA's processing of several applications of Program awardees thus far, and that investigation is ongoing. The Task Force selected certain applications to prioritize for investigation if it received information about red flags in connection with a particular application or applicant—for example, if a whistleblower indicated that there were potential concerns with a company's application or compliance with Program requirements. In some instances, however, the Task Force did not initially intend to include certain companies in its priority review, but information arising during the Task Force's investigation alerted it to potential issues that should be further examined.

As noted previously, the draft versions of the EOA 2013 that included revisions from Parker McCay were, from the Task Force's perspective, a very significant red flag. The Task Force remains skeptical that a company whose lobbyist had placed special provisions for its benefit in the tax-incentive legislation would have a legitimate business plan to move jobs to a different state. Indeed, three of these companies—Conner Strong & Buckelew Companies, LLC ("CSB"), The Michaels Organization, LLC ("TMO"), and NFI—had publicly committed to moving to Camden on September 24, 2015—thirteen months prior to their Grow NJ applications, which would seem

[107] N.J. Stat. § 34:1B-244(a).

[108] N.J. Stat. § 34:1B-244(d) ("When considering an application involving intra-State job transfers, the authority shall require the business to submit the following information as part of its application: a full economic analysis of all locations under consideration by the business; all lease agreements, ownership documents, or substantially similar documentation for the business's current in-State locations; and all lease agreements, ownership documents, or substantially similar documentation for the potential out-of-State location alternatives, to the extent they exist.").

to directly belie their claim that they were considering an out-of-state move. Yet, although the Parker McCay-edited version of the EOA 2013 had, we have determined, been shared with the EDA's then President and Chief Operating Officer, Tim Lizura, we saw no evidence that Mr. Lizura considered these applications with any skepticism or alerted the BDOs and underwriters reviewing the applications to apply any heightened scrutiny themselves. We thus worried that the process may have been compromised.[109] We therefore made our review of the EDA's oversight of some of these applications a key priority.

To compound our concerns, on March 11, 2019, the Executive Chairman of CSB and member of the Board of Trustees of The Cooper Health System ("Cooper Health"), George Norcross, III, published an Op-Ed on *NJ.com*. In the Op-Ed, Mr. Norcross stated, among other things, that the Programs' tax credits were intended to "convince firms to move to Camden," but "were **not intended** to entice firms that were leaving the state to remain." (Emphasis added).[110] Mr. Norcross's contention caught the Task Force's attention because, in point of fact, every application for an in-state company that proposed a move to Camden did, in fact, certify that jobs were "at risk" of leaving the State (except one that had planned to eliminate jobs if denied tax incentives), including applications from entities with affiliations to Mr. Norcross, including CSB and Cooper Health.[111] We also learned that TMO and NFI were affiliated with Mr. Norcross in that their applications were related to CSB's application. The Op-Ed thus raised a concern about whether any of these companies had not, in fact, been considering moving out of the State at the time they applied for tax incentives under Grow NJ. The Task Force decided to review the applications for those companies and—even on a cursory review—additional concerns arose, and the Task Force determined that an examination of the EDA's oversight of these applications was appropriate.

Thus, we reviewed the applications of Cooper Health, CSB, TMO, and NFI, to examine whether the EDA gave any meaningful scrutiny to their certifications that jobs were at risk of leaving New Jersey and whether they had viable out-of-state locations that were bona fide, suitable,

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[109] To date, we have found no direct evidence that Mr. Lizura's actions and inactions were motivated by any corrupt intent.

[110] George E. Norcross, III, *George Norcross: We need tax incentives to continue to rebuild Camden*, NJ.COM, March 11, 2019, http://s.nj.com/okKoUPg.

[111] Although Cooper Health's application indicated that jobs were not at risk of leaving the State, it subsequently informed the EDA during the course of EDA's processing of its application that—in fact—it was considering an out-of-state move to Philadelphia. These circumstances are described more fully below. The EDA did not require Cooper Health to submit a revised application, nor did it require a new certification from Cooper Health's CEO.

and available.[112] After conducting this review, we found that the EDA's scrutiny of these four entities' applications was inadequate in several material respects and that, as a result, the EDA failed to discover significant problems with those applications. We describe below EDA's deficiencies in assessing these four applications.

a) The Cooper Health System

On November 7, 2014, Cooper Health applied to the EDA for tax incentives under the Grow NJ program. Just over a month later, the EDA approved Cooper Health for a tax-incentive award of $39,990,000, in exchange for Cooper Health's relocation of certain back-office operations from various existing sites in Cherry Hill and Mt. Laurel, New Jersey to Camden, New Jersey. During the EDA's processing of Cooper Health's Grow NJ application, Cooper Health represented to the EDA that it was considering relocating its operations to Philadelphia, Pennsylvania as an alternative to Camden. Based on this representation, an internal EDA memorandum recommended awarding the tax incentives to Cooper Health to "make New Jersey more competitive." However, there is significant evidence, described below, that Cooper Health's purported alternative location in Philadelphia was illusory, and the EDA failed to sufficiently investigate that possibility based on the information in its possession.

Cooper Health's tax credits were for its relocation of certain administrative functions to One Federal Street, Camden, New Jersey, in a building often referred to as the "L-3 Building." Internal Cooper Health documents indicate that Cooper Health favored the L-3 Building in Camden as a relocation site as early as March 2014, months before its November 2014 application for tax incentives: on March 28, 2014, Douglas Shirley, Cooper Health's CFO, sent an email to John Sheridan, Cooper Health's President and CEO: "I have the proposal . . . and it is very rich! From a cash flow and balance sheet [sic] the L-3 is the best deal by a long shot. No other option can touch it, so you need to be okay with this option before we go out with it."[113] In addition, an internal Cooper Health document dated April 1, 2014, entitled "Potential Cooper Office Options," contains a chart of three possibilities for Cooper Health's office, including the L-3 Building in Camden and two other potential locations—both also in Camden.[114] The chart does not list any potential Philadelphia location. The EDA did not request contemporary business records from Cooper Health concerning relocations it was considering, so it did not have the benefit of these documents.

[112] The Task Force has examined several other applications for these same purposes but has not found other instances—at this stage—where serious concerns were apparent.
[113] Exhibit 14.
[114] Exhibit 15.

When Cooper Health initially applied to the EDA for tax incentives on November 7, 2014, it did not claim that it was considering relocating out of state. The application asked: "Are any jobs listed in the application at risk of being located outside of New Jersey?" Cooper Health answered "No."[115]

On November 8, 2014, the day after Cooper Health's application was filed, Cooper Health's representative, Kevin Sheehan of the Parker McCay law and lobbying firm, sent an email to an EDA employee that processes Grow NJ applications, copying EDA's Tim Lizura, to "give . . . a heads up that Cooper Hospital filed its GrowNJ application." Mr. Sheehan added, "As you review the application, if you need anything, let me know."[116]

A few days later, on November 10, 2014, the EDA employee responded to Mr. Sheehan with a list of several items the EDA needed, including a completed "Cost Benefit Analysis" (or "CBA") form.[117] The EDA's CBA forms are used by Grow NJ applicants to list certain information about the potential relocation sites the applicant is considering, and to show the difference in costs between, on the one hand, the more expensive New Jersey location for which the applicant is seeking tax incentives, and, on the other hand, the less expensive alternative location that the applicant will ostensibly relocate to if denied tax incentives in New Jersey. Responding to the EDA employee's request for a CBA form, Cooper Health's Vice President of Real Estate and Facilities, Andrew Bush, copying Kevin Sheehan, submitted to EDA on November 11, 2014, a CBA form that compared the costs of the L-3 Building in Camden, for which Cooper Health sought tax incentives, to the costs of Cooper Health's existing facilities in Cherry Hill and Mt. Laurel, New Jersey—not to the costs of any out-of-state alternative site.[118] In other words, the CBA form was consistent with Cooper Health's representation on its application that no jobs were at risk of being relocated outside of New Jersey, since the CBA listed only in-state locations as under consideration.

Two days later, on November 13, 2014, the EDA employee sent an email to Parker McCay's Mr. Sheehan: "I need to talk to you about Cooper, what time do you have today or tomorrow to talk?"[119] Mr. Sheehan responded later that day: "I have [sic] here for the rest of the day today. Let me know what time works for you."[120] Later that night, Mr. Sheehan wrote to the EDA employee

[115] Exhibit 16.
[116] Exhibit 17.
[117] Exhibit 17.
[118] Exhibit 17.
[119] Exhibit 18.
[120] Exhibit 18.

again, under the subject line "Cost benefit." Mr. Sheehan wrote: "They are working on it. Will get to you ASAP."[121]

Several days later, on November 18, 2014, Mr. Sheehan sent an email to the EDA employee with an updated CBA form for the Cooper Health application.[122] That revised form compared the costs of the L-3 Building in Camden not, as previously, to the costs of Cooper Health's existing locations in New Jersey, but instead to the costs of a claimed alternative location at 1900 Market Street in Philadelphia.[123] The CBA form stated that the purported 1900 Market Street location was 120,000 sq. ft. and cost $23.50 per sq. ft. to rent.[124] In other words, the revised CBA form effectively communicated to the EDA that Cooper Health was considering potential relocation sites in Camden or in Philadelphia. The Task Force interviewed the EDA employee who had these communications with Cooper Health and its representative, Mr. Sheehan. The EDA employee said that he did not recall the phone call with Mr. Sheehan, but he insisted that he would not have suggested to Cooper Health that it should claim to be considering an out-of-state relocation when it was not sincerely considering one. The EDA employee stated that he believed Cooper Health was in fact considering an out-of-state relocation.

Once all necessary documents for Cooper Health's Grow NJ application were submitted, the application was transferred to an EDA underwriter. On November 24, 2014, the EDA underwriter assigned to the application sent an email to Mr. Bush seeking "back-up on the proposed terms for each of the locations, NJ and PA, ie term sheets, letters of intent and/or draft lease agreements."[125] The underwriter, in other words, asked Cooper Health to provide documentation of the Camden and Philadelphia locations that purportedly were under consideration for relocation.

Several days later, on December 1, 2014, Cooper Health's Mr. Bush wrote to the EDA underwriter: "Sorry for the delay in the response. . . . I am touring alternate locations in PA on Wednesday and hope to have term sheets by the end of the week."[126] The underwriter responded: "Thanks, it is very important that I have some back-up to the lease terms as presented in the Cost Benefit analysis – it's all verbal at this point?"[127] Mr. Bush replied: "All quoted numbers are verbal

[121] Exhibit 19.
[122] Exhibit 20.
[123] Exhibit 20.
[124] Exhibit 20.
[125] Exhibit 21.
[126] Exhibit 21.
[127] Exhibit 22.

from prospective landlords in Pennsylvania. I expect to have proposals to justify the numbers by the end of the week."[128]

On December 5, 2014, Mr. Bush sent the EDA underwriter, copying the EDA employee who had previously communicated with Cooper Health, and Parker McCay's Mr. Sheehan, a lease proposal from a real estate broker, dated that same day, for space in Centre Square in Philadelphia.[129] The proposal was for 113,756 sq. ft. in the building at 1500 Market Street, in Philadelphia's Centre Square, offered for either $22 or $24.75 per rentable sq. ft. depending on the terms of the lease. Mr. Bush explained in his cover email that the lease proposal was from a prospective Philadelphia landlord, and noted that "**[t]he terms are slightly more aggressive than those presented in the cost benefit analysis meaning that there is more of a burden to Cooper to remain in NJ**." (Emphasis added).[130] The Task Force interviewed the EDA employees who received this email from Mr. Bush. Both EDA employees told the Task Force that, based on Mr. Bush's representation that there was a "burden to Cooper to remain in NJ" because of the purported cost savings from relocating to Philadelphia, Cooper Health was sincerely considering relocating there.[131]

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[128] Exhibit 22. The Task Force has interviewed both the BDO and the underwriter responsible for the Cooper Health application. Both have indicated, credibly in our view, that they believed Cooper Health's representations that it was considering an out-of-state location as an alternative to Camden. Although Cooper Health has now publicly asserted that "the EDA, not Cooper, initiated requests for comparable leases of Philadelphia properties," both have denied this assertion. *See* Thomas W. Rubino, *Cooper Health official says the company's tax incentive award is appropriate, justified and legitimate*, NJ.COM, June 12, 2019, https://www.nj.com/opinion/2019/06/cooper-health-official-says-the-companys-tax-incentive-award-is-appropriate-justified-and-legitimate.html.

[129] Exhibit 23.

[130] Exhibit 23.

[131] Cooper Health's CEO certification, signed by the health system's CEO, Adrienne Kirby, was dated November 11, 2014—that is, prior to Cooper Health's November 18, 2014 submission of the CBA form with a purported Philadelphia alternative location at 1900 Market Street, and also prior to Cooper Health's December 5, 2014 submission of the lease proposal for 1500 Market Street in Philadelphia. Cooper Health did not submit a new CEO certification to EDA after it changed its application in this respect. Because Cooper Health has declined to cooperate with the Task Force's investigation, the Task Force has been unable to determine what Ms. Kirby did or did not know or believe concerning Cooper Health's relocation deliberations at the time she executed the certification.

The EDA underwriter prepared a Confidential Memorandum of Analysis, dated December 9, 2014.[132] The memorandum stated that Cooper Health had demonstrated that "rental costs in Camden are higher than leasing comparable space in Philadelphia, PA . . . . As a result, [Cooper Health] has applied for Grow NJ tax credits to offset these costs and make New Jersey more competitive."[133] In the "Conclusions" section of the memorandum, the underwriter stated that Cooper Health's jobs were "at risk of being located outside of New Jersey" and that the grant of tax credits under the Grow NJ program would be "a material factor in the company's decision."[134] The EDA underwriter also prepared a Project Summary memorandum, which similarly stated that Cooper Health was considering alternative relocation sites in Camden and Philadelphia, that hundreds of New Jersey jobs were "at risk of being located outside the State," and that Grow NJ tax credits would be "a material factor in the applicant's decision to make a capital investment and locate in Camden."[135] Under the "Conditions of Approval" section of the memorandum, it stated as Condition No. 1 that Cooper Health "has not . . . committed to remain in New Jersey."[136] The memorandum concluded by recommending that EDA's Board "approve the proposed Grow New Jersey grant to encourage Cooper Health System to locate in Camden."[137] The memoranda were provided to EDA's Board and, on December 9, 2014, the Board voted to approve Cooper Health to receive almost $40 million in tax incentives.

The Task Force has found evidence that the claimed alternative site in Philadelphia was not a genuine alternative site but, rather, was created solely for the purpose of submitting evidence of an alternative site to the EDA, thereby bolstering Cooper Health's claim for tax incentives. On November 25, the day after the EDA underwriter had sent an email to Cooper Health's Andrew Bush asking for "back-up" for the locations described on Cooper Health's CBA form, including the Philadelphia location, Mr. Bush emailed a real estate broker, Jon Sarkisian at the CBRE brokerage firm, under the subject line "favor."[138] Mr. Bush's email asked the broker to produce a term sheet for a "credible" rental location in Philadelphia that would match the space (120,000 sq. ft.) and cost

[132] Exhibit 24.
[133] Exhibit 24.
[134] Exhibit 24.
[135] Exhibit 25.
[136] Exhibit 25.
[137] Exhibit 25.
[138] Exhibit 26. The Task Force notes that CBRE has been entirely cooperative with the Task Force's investigation to date. The Task Force has no reason to believe that anybody at CBRE other than the persons named in this First Report had any awareness of or improper involvement in the matters discussed herein.

($23.50 per rentable sq. ft.) specifications of the Philadelphia location described in the CBA that Cooper Health had submitted to the EDA on November 18, 2014:

> As part of our EDA application we need a term sheet for a potential location outside of NJ.
>
> I need a **credible location that is LESS expensive than L3**. I think that Center Sq may be the right comp – the building is listed by CBRE Given that this building is within the CBRE family – can you get me a term sheet for 120k sf? **Quietly? No probability of us moving to Center Sq, so I don't want to make too much noise**
>
> I need a full service number of $24/sf or less to make the numbers work. Space can be as-is for 10 or 15 year term.
>
> Let me know
>
> Thanks
>
> Andy

(Emphasis added).[139] The obvious reference is that Mr. Bush was asking Mr. Sarkisian to provide a sham term sheet that could be supplied to the EDA as evidence of its bona fide intent to relocate outside New Jersey, when in fact Cooper Health had no such intention.

Although obviously the EDA was not copied on that email, Cooper Health's application file contained numerous red flags that should have called into question the sincerity of its statement that it was considering relocating to Philadelphia and that the cost differential between the two proposed locations presented a "burden to Cooper to remain in NJ."[140] Cooper Health's initial application did not claim any possibility of an out-of-state relocation—and, indeed, expressly disclaimed the possibility. Only after the application was submitted to the EDA did Cooper Health provide purported evidence of an out-of-state location and claim that there was a "burden . . . to remain in NJ." Even at that point, Cooper Health made inconsistent representations about the Philadelphia site in question, first citing one address (1900 Market Street), and then citing another (1500 Market

[139] After Mr. Bush sent the request to Mr. Sarkisian for a "credible" location, Mr. Sarkisian responded later that day, noting that he had received the email as well as a voicemail from Mr. Bush. Mr. Sarkisian added, "I like [sic] to speak to you the numbers may not come in the area that you thought. Call me in the office tomorrow." Mr. Bush responded, "Will do." Exhibit 26.
[140] Exhibit 23.

Street). Those facts should have alerted the EDA underwriter to a potential problem, prompting additional diligence. However, the EDA failed to further investigate the facts to ensure that Cooper Health was genuinely considering relocating to Philadelphia, and that the location was bona fide, suitable, and available.

The EDA Board approved Cooper Health for an almost $40 million award on December 9, 2014.[141] The Task Force requested that the EDA recalculate the award that Cooper Health could have received if it had communicated to the EDA, as it had communicated to the real estate broker, that there was "[n]o probability"[142] of Cooper Health relocating to Philadelphia instead of Camden. Based on a recalculated net benefits analysis, the EDA concluded that Cooper Health would have qualified for only a $7.15 million award at most. Therefore, the failures in the EDA's processing of Cooper Health's Grow NJ application appear to have resulted in over $32 million in improperly approved tax incentives, putting aside the potential ramifications of Mr. Bush's apparent misrepresentation.

b) Conner Strong & Buckelew, The Michaels Organization, and NFI

CSB, TMO, and NFI submitted Grow NJ applications on October 24, 2016.[143] The three companies sought tax incentives in connection with joint plans to move into a new office tower on the Delaware River waterfront of Camden, New Jersey (the "Camden Tower"). Floors 15 through 18 of the Camden Tower (110,161 sq. ft.) were allocated to CSB, floors 12 through 14 (101,511 sq. ft.) were allocated to TMO, and floors 9 through 11 (101,511 sq. ft.) were allocated to NFI. The Camden Tower was to be constructed by the Liberty Property Trust development firm.

i) Background Context

Although CSB, TMO, and NFI submitted their Grow NJ applications to the EDA in October 2016, the EDA was aware of their plans to relocate to Camden long before then.

In September 2014, more than two years before the companies filed their applications, senior EDA management held a meeting with Philip Norcross of Parker McCay and several

[141] Cooper Health could have potentially qualified for a larger award, but during EDA's processing of the application, Cooper Health removed a number of jobs from the application to keep the award under $40 million. Under EDA policy, awards over $40 million require additional scrutiny and processing time.
[142] Exhibit 26.
[143] Exhibits 27, 28, and 29.

representatives from Liberty Property Trust. The purpose of the meeting, as described in an email setting it up, was to discuss "a large office building on the Camden Waterfront."[144]

A year later, on September 24, 2015, CSB's Executive Chairman, George E. Norcross, III, sent an email attaching a press release to the EDA's then President and Chief Operating Officer Tim Lizura discussing Liberty Property Trust's plans for the Camden waterfront, including the Camden Tower. The press release listed "local leaders who have **committed** to investing in the project either personally or through their firms," including "George E. Norcross, III, Executive Chairman, Conner Strong & Buckelew," "John O'Donnell, President, The Michael's Organization," and "Sidney Brown, Chief Executive Officer, NFI, and his family." (Emphasis added).[145]

That same day, then-Governor Chris Christie, then-Mayor Dana Redd, and others hosted a major press conference announcing the Camden waterfront development at the Camden Aquarium. George Norcross attended the event. At the event, a reporter for *NJTV News* asked Mr. Norcross, "It's been reported that you're going to put $50 million into the project, is that true?" He responded, "It's absolutely true. I **committed** to do this when I was trying to persuade one of the biggest real estate concerns in the country to become part of this effort, and we all thought that was going to be a credible act, and we're putting our money where our mouths are, and we're looking forward to being a part of it." (Emphasis added).[146] Press coverage around that time indicated that CSB, TMO, and NFI were expected to relocate to the new Camden development.[147]

Internal emails from the EDA show that Mr. Lizura attended the press event, at which he spoke to at least one reporter and one representative from Liberty Property Trust, the developer of the project.[148] But, later, when the companies were preparing their applications for tax incentives

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[144] Exhibit 30.
[145] Exhibit 31.
[146] *See* Michael Aron, *Christie Announces Historic $700 Million Redevelopment Project in Camden*, NJTV NEWS, Sept. 24, 2015, https://www.njtvonline.org/news/video/christie-announces-historic-700-million-redevelopment-project-in-camden/ (transcription from video).
[147] *See, e.g.*, Allison Steele, *Plans for Vast New Development on Camden Waterfront*, PHILA. INQUIRER, Sept. 24, 2015, https://www.inquirer.com/philly/business/20150924_Top_developer_to_announce_Camden_waterfront_project.html (reporting, based on an anonymous source, that CSB was "considering moving its headquarters into the development" and TMO and NFI were also "expected to join the project").
[148] Mr. Lizura sent an email to several EDA staff members saying that he was "[h]eading down now" when he was leaving for the event. *See* Exhibit 32.

based on representations that they were considering out-of-state locations and requested an initial assessment of the net benefits test, an EDA employee indicated that he planned to run the test assuming that no jobs were at risk of leaving the state—and Mr. Lizura directed the employee to run a preliminary assessment as if the jobs were at risk.

Specifically, on August 31, 2016, Kevin Sheehan of Parker McCay sent an email to an EDA BDO requesting that preliminary award calculations be run for CSB, TMO, and NFI.[149] The BDO forwarded Mr. Sheehan's email to an EDA underwriting supervisor, Director of Bonds and Incentives John Rosenfeld, saying: "[These] are all the applicants that may go into the LPT [Liberty Property Trust] space at the Camden Waterfront. All three would like to know what their award could potentially be before focusing their efforts on an application for this space, especially since it's expensive."[150] When Mr. Rosenfeld ran the numbers for two of the three companies later that day, he explained the results internally to others at EDA as follows: "I would advise caution on these numbers but, based on the extremely limited information involved, it looks like these applicants COULD have a Net Benefit of approximately $36.8M and $43.3M respectively."[151]

A few days later, the assigned EDA BDO copied Mr. Lizura into her email chain with Mr. Rosenfeld, saying as follows: "Hi John, are these [calculations] including the new and retained job numbers that are listed below? Also Tim has requested to see the reports so he can review them as well, thanks!" Mr. Rosenfeld replied that he did not include any credit for income taxes related to jobs retained in New Jersey, because he had "assumed that this was a situation where the jobs would stay where they are in NJ without the award . . . ." Mr. Lizura flatly told Mr. Rosenfeld, "**The retained jobs are at risk. Can you run them as such**." (Emphasis added).[152]

Mr. Lizura's instruction to Mr. Rosenfeld to assume that the jobs were at risk, given the well-publicized commitment made by Mr. Norcross at the press conference that he attended, certainly invites skepticism. In an interview with the Task Force, Mr. Lizura said that he was merely instructing Mr. Rosenfeld to run the assessment using the numbers that Mr. Sheehan had provided and was not making a factual statement about whether the "retained jobs" were "at risk." He further indicated that, at that stage, he deferred to Mr. Sheehan about whether the jobs were "at risk" because Mr. Sheehan knew the tax-incentive programs well and understood their requirements. Mr. Lizura also stated that he viewed the statements in the September 2015 press

[149] Exhibit 33.
[150] Exhibit 33.
[151] Exhibit 33.
[152] Exhibit 33.

release and press conference that CSB, TMO, and NFI had "committed" to the Camden waterfront development project only as a commitment to invest in the real estate project, and that he was not aware of whether CSB, TMO, or NFI had committed to relocate to Camden at any point before their applications were filed.[153] Given the statements a year earlier that the very companies applying had "committed" to Camden, the Task Force believes that these applications should have been scrutinized, particularly given the size of the awards at stake. Indeed, despite his instruction to Mr. Rosenfeld to defer to Mr. Sheehan's numbers about at-risk jobs, Mr. Lizura indicated during this interview with the Task Force that he instructed his team to pay particular attention to the applications because they involved companies related to Mr. Norcross. Mr. Lizura did not, however, identify any particular steps he asked the team to take to scrutinize the applications, and the Task Force has found no evidence of any. In any event, Mr. Rosenfeld, after re-running the test based on Mr. Lizura's instruction, said: "With the at risk jobs, they both get to about $88.8M in net benefit . . . ."[154] The final awards were granted based substantially on that calculation.

ii) The Applications

When CSB, TMO, and NFI submitted their Grow NJ applications on October 24, 2016, notwithstanding the prior public reports that the three companies had already "committed" to relocating to Camden, the companies all stated that they were considering a potential relocation to Philadelphia as an alternative.[155] Specifically, each company stated "Yes" in response to the application's question of whether jobs were at risk of being located outside of New Jersey and listed "Pennsylvania" as in competition with New Jersey for the jobs.[156] Each company stated, in virtually identical language, that the company's "business is expanding and requires additional space. If the credits are not awarded, the business will seek to relocate at a less expensive location outside of New Jersey."[157] Each company's application stated that the company had retained real

[153] Even if CSB's, TMO's, and NFI's only "commitment" was to invest in the real estate project, and not to relocate their offices there, as Mr. Lizura claims to have believed, it nonetheless is difficult to understand why a different understanding would not emerge once the companies filed their applications and indicated their intent to relocate there. The EDA had the authority to request documentation from CSB, TMO, and NFI that would have revealed the nature of the "commitment" the companies had made and when they made it, but the EDA failed to exercise such authority.
[154] Exhibit 33.
[155] Exhibits 27, 28, and 29.
[156] Exhibits 27, 28, and 29.
[157] Exhibits 27, 28, and 29.

estate brokers "to identify Class A office space in Philadelphia."[158] Real estate proposal letters from real estate brokers for Philadelphia space for each company were attached to the applications.[159] However, TMO's and NFI's proposal letters for space in Philadelphia had already expired by the time the applications were filed. (CSB's proposal letter did not specify an expiration date.)

On November 18, 2016, the EDA underwriter assigned to the three companies' applications sent an email to Kevin Sheehan of Parker McCay, who represented all three companies, to ask whether the companies still had valid offers for space in Philadelphia, because the real estate proposal letters submitted with the companies' applications appeared to have expired.[160] The underwriter followed up ten days later, also asking Mr. Sheehan to clarify how many employees at the three companies were at risk of moving out of New Jersey.[161] Mr. Sheehan replied that "[a]ll employees are at risk in all 3 companies."[162] On November 30, 2016, Mr. Sheehan sent the EDA underwriter a new real estate proposal letter for CSB, dated December 1, 2016, outlining a proposal for space in Philadelphia.[163] The December 1, 2016 real estate proposal differed significantly from the prior real estate proposal that CSB had submitted with its application. The initial proposal offered approximately 150,000 sq. ft. of space on the third through seventh floors, and the eleventh and twelfth floors, of the building located at 1601 Market Street in Pennsylvania.[164] CSB's new letter offered the company "approximately 110,000" sq. ft. of space on the third through seventh floors and the thirteenth floor of the building. The letter stated that it would expire on December 31, 2016.[165]

Two months later, on March 1, 2017, Mr. Sheehan sent the EDA underwriter new real estate letters for NFI and TMO, outlining proposals for both companies for space at 1500 Spring Garden Street in Philadelphia.[166] Both real estate proposals differed from the initial, expired proposals that the companies submitted with their applications in respects, but the changes with respect to TMO's proposals were significant. TMO's initial real estate proposal, dated August 30, 2016, had offered

[158] Exhibits 27, 28, and 29.
[159] Exhibits 34, 35, and 36.
[160] Exhibit 37.
[161] Exhibit 38.
[162] Exhibit 38.
[163] Exhibit 39.
[164] Exhibit 34.
[165] Exhibit 39.
[166] Exhibits 40 and 41.

the company 103,491 sq. ft. of space on the second floor of 1500 Spring Garden Street.[167] The proposal further stated that, in the alternative, TMO was offered 103,710 sq. ft. of space on the first and seventh floors of the building.[168] TMO's second real estate proposal, dated February 28, 2017, offered the company 95,928 sq. ft. of space divided between the basement level, two separate suites on the first floor, a suite on the seventh floor, and another suite on the twelfth floor.[169] The proposal letter also stated that the space on the seventh floor—which comprised approximately a third of the total space offered to TMO—was "encumbered by a Right of First Offer in favor of [another company]."[170] Both NFI's and TMO's real estate proposal letters stated that they would expire on March 24, 2017.[171]

The differences between CSB's, NFI's, and TMO's first and second sets of real estate proposal letters for Philadelphia are summarized below:

Company	**CSB**		**NFI**		**TMO**	
Address	**1601 Market Street**		**1500 Spring Garden Street**		**1500 Spring Garden Street**	
Proposal	**First**[172]	**Second**[173]	**First**[174]	**Second**[175]	**First**[176]	**Second**[177]
Date	8/29/2016	12/1/2016	8/29/2016	2/28/2017	8/30/2016	2/28/2017
Total sq. ft.	153,345	~110,000	103,491	93,308	103,491 OR 103,710	95,928
Floors	3-7, 11-12	3-7, 13	2	2	2 OR 1,7	Basement, 1, 7, 12
Expiration	Unspcfd.	12/31/2016	9/9/2016	3/24/2017	9/9/2016	3/24/2017

[167] Exhibit 35.
[168] Exhibit 35.
[169] Exhibit 41.
[170] Exhibit 41.
[171] Exhibits 40 and 41.
[172] Exhibit 34.
[173] Exhibit 39.
[174] Exhibit 36.
[175] Exhibit 40.
[176] Exhibit 35.
[177] Exhibit 41.

The EDA underwriter prepared Project Summary memoranda based on the information provided by the companies.[178] Each company's memorandum stated that the company was considering between relocation in the Camden Tower or an alternative location in Philadelphia, that their New Jersey jobs were "at risk of being located outside the State," and that Grow NJ tax credits would be a "material factor" in the company's decision whether to locate in Camden.[179] Under the "Conditions of Approval" section of each memorandum, it stated as Condition No. 1 that the company "has not . . . committed to remain in New Jersey."[180] Each memorandum concluded by recommending that EDA's Board "approve the proposed Grow New Jersey grant to encourage [the respective company] to locate in Camden."[181] The memoranda were provided to EDA's Board and, on March 24, 2017, the Board voted to approve CSB, TMO, and NFI for total tax incentive awards of almost $245 million—$86,239,720 for CSB, $79,378,750 for TMO, and $79,377,980 for NFI.

The Task Force has discovered evidence appearing to indicate that the three companies did not genuinely consider Philadelphia as an alternative location to Camden. In August 2016, only a few months before submitting their applications, and almost a year after the press conference during which their "commitment" to the Camden project was reported, Kevin Sheehan appears to have reached out to a real estate broker, Ken Zirk at CBRE, to solicit offers for real estate in Philadelphia. After the initial outreach, the companies collaborated to obtain proposals for Philadelphia real estate to submit to the EDA, and NFI led the efforts on behalf of all companies.

On August 26, 2016, NFI's Chief Financial Officer, Steven Grabell, sent an email to TMO's Chief Financial Officer, Joseph Purcell, and CSB's Chief Financial Officer, John Muscella, to explain that he had authorized the real estate broker "to proceed full speed ahead with getting a proposal for 1500 Spring Garden."[182] NFI's Mr. Grabell wrote that the building located at 1500 Spring Garden Street was large enough for both NFI and one other company to obtain proposals from, and further, the real estate broker had "identified an additional possibility for 95,000 square feet at 1601 Market" that the third company "could use."[183]

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[178] Exhibits 42, 43, and 44.
[179] Exhibits 42, 43, and 44.
[180] Exhibits 42, 43, and 44.
[181] Exhibits 42, 43, and 44.
[182] Exhibit 45.
[183] Exhibit 45. Meanwhile, Mr. Zirk reached out to another broker who represented the landlord for 1601 Market Street. Mr. Zirk's note, expressing interest in the building on behalf of CSB, was forwarded to the building's landlord, who was surprised by the request: "This does not make any sense, we get on Friday afternoon a [request for proposal] that is due on Monday? Where is this

Several days later, on August 29, 2016, NFI's Mr. Grabell wrote to Mr. Zirk, the real estate broker, to ask when the companies would be getting term sheets for the 1500 Spring Garden and 1601 Market properties in Philadelphia.[184] Later that day, Mr. Zirk sent one proposal letter, for NFI alone, for 1500 Spring Garden Street.[185] That evening, Parker McCay's Mr. Sheehan wrote to the group of CFOs for the three companies and the broker, noting that the proposal was for NFI and asking, "Is there one for Michaels?"[186] In response, NFI's Mr. Grabell stated: "Enough space for Michael's in that building as well. **I think it would be a little suspicious to ask for a duplicate**. Any thoughts?" (Emphasis added).[187] TMO's Mr. Purcell responded and wrote that he had understood that all three of the companies were "going with the 1500 Spring Garden Property."[188] However, in view of the concern that it would be "a little suspicious" for multiple companies to claim the same alternative location in Philadelphia, TMO's Mr. Purcell wrote that he would be willing for TMO "to go with" a different location in another city entirely—Fort Washington, Pennsylvania, instead of Philadelphia—if one of the other two companies requested it.[189] NFI's Mr. Grabell replied that "1500 Spring Garden has space for 2 of us, but not 3. That is why we reached out to 1601 Market."[190] Mr. Grabell asked Mr. Zirk whether he would "feel comfortable getting a similar quote for Michael's for 1500 Spring Garden?"[191] Mr. Zirk responded that he would discuss with the landlord's broker "tomorrow first thing."[192] TMO ultimately obtained a

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tenant from? How would we not have known about a 100,000 SF prospects [sic]?" The broker responded with a lengthy explanation, noting, among other things, that CSB's "principal, George Norcross, is a major political figure in South Jersey & very well connected locally." The broker wrote to the landlord that CSB "had been attempting to [relocate to] Camden with Liberty Property Trust but the deal apparently got too expensive & they didn't get the tax breaks/incentives that they were seeking," so CSB had decided to move the jobs to Philadelphia instead. Exhibit 46. In fact, however, CSB had not yet applied for tax incentives in New Jersey at that point, let alone been rejected for them.

[184] Exhibit 47.
[185] Exhibit 47.
[186] Exhibit 48.
[187] Exhibit 48.
[188] Exhibit 48.
[189] Exhibit 48.
[190] Exhibit 48.
[191] Exhibit 48.
[192] Exhibit 48.

proposal letter for 1500 Spring Garden, and CSB obtained a proposal letter for 1601 Market Street, which both companies submitted with their applications in October 2016.

Although the EDA did not have access to the companies' emails with the real estate broker, which the Task Force obtained, there were nonetheless clear red flags in CSB's, TMO's, and NFI's EDA application and in the public record that should have caused EDA personnel to question the three companies' statements that they were considering relocating out of the State. As discussed above, there were public statements, of which senior EDA leadership was aware, indicating that the three companies had already "committed" to relocate to Camden long before they claimed to be considering relocating to Philadelphia. Despite these public statements, EDA leadership appear to have instructed EDA staff that the companies' jobs were "at risk."

In addition, at the Task Force's public hearing on May 2, 2019, the current Managing Director of the EDA's the Underwriting department, David Lawyer (who did not work on these applications and was not responsible for the Grow NJ program at the time they were processed) testified that it was "unusual" for companies to submit expired proposal letters with their tax incentive applications, and the fact that the letters had expired when they were submitted "casts doubt on whether that site [was] available."[193] Mr. Lawyer also testified that the changes to the amount and the configuration of the space in TMO's alternative-site proposal, as well as the fact that a significant portion of the space was encumbered by a right of first offer, raised red flags about the sincerity of the company's consideration of the property.[194] Mr. Lawyer testified that, in his view, the issues with CSB's, TMO's, and NFI's real estate proposals raised serious questions, "because . . . there's a pattern."[195] Similarly, John Boyd, an expert in corporate site selection, testified that it is common for companies considering relocation to negotiate for extended offer periods to provide adequate time to assess the suitability of potential real estate.[196] That these companies did not do so but instead submitted expired real estate offers, therefore, was a red flag. Mr. Boyd further testified that in his experience, barring extraordinary circumstances like emergency relocation after a natural disaster, companies never want office space spread out over noncontiguous floors of a building of the sort TMO was purportedly considering, spread out across

[193] Hr'g Tr. (May 2, 2019) at 150:4-25, 162:12-16.
[194] Hr'g Tr. (May 2, 2019) at 163:12-17, 164:14-19.
[195] Hr'g Tr. (May 2, 2019) at 164:23-165:6.
[196] Hr'g Tr. (May 2, 2019) at 108:10-109:6.

four separate floors, including the building's basement.[197] The EDA staff, however, took no action to further investigate based on these and other red flags.

In 2017, the EDA approved CSB, TMO, and NFI for almost $245 million in tax incentive awards collectively—approximately $86.2 million for CSB, $79.4 million for TMO, and $79.4 million for NFI. The Task Force requested the EDA recalculate the awards the three companies could have received if they had communicated to the EDA that they were not considering any potential relocation to Philadelphia instead of Camden—which, based on the evidence discussed above, appears to have likely been the truth. Based on recalculated net benefits analyses, the EDA concluded that CSB's award would have stayed the same ($86.2 million), that TMO would have qualified for only a $60.8 million award at most (rather than $79.4), and that NFI would have qualified for only a $27.2 million award at most (rather than $79.4). Therefore, the EDA's failure to investigate the red flags in these companies' applications could have resulted in over $70 million in improperly approved tax-incentive awards.

5. Lack of Proper Reporting Channels

The EDA does not have official reporting channels in place for the processing, review and recording of internal or external complaints about Program awardees or applicants and does not maintain a "hotline" or reporting line for outside parties to report potential misconduct related to the EDA's tax incentive or other programs. The absence of such reporting mechanisms makes it more likely that misconduct—whether on the part of EDA employees or companies—will be missed.

Several EDA employees we interviewed suggested that external complaints or tips should be elevated to an individual in Human Resources or the Deputy Attorney General, but there was no official reporting line or process for ensuring that all complaints and tips were carefully considered and escalated to the appropriate individuals. Nor was there an official record of such complaints or tips maintained within the EDA. Two BDOs we interviewed recalled outreach from FBI agents regarding a potentially fraudulent application. Those BDOs recalled that the information was generally "disseminated" amongst the directors and Deputy Attorney Generals, but there was no formal system for tracking flagged companies. In another instance, a local contact advised a BDO Program Manager that a Grow NJ awardee had recently fired 80 employees—or 30% of its workforce. The Program Manager who received this notice recalled that he referred the information to the Director of Portfolio Management and Compliance but was not involved in any further action. The Managing Director of Business Development indicated that there was no policy regarding how to treat this type of information but believed the information would have been "socialized" within

[197] Hr'g Tr. (May 2, 2019) at 109:11-110:8.

the EDA and referred to the Portfolio Management and Compliance group if it involved a tax incentive grant recipient. Although we believe that, in the latter example, the information ultimately reached the appropriate individuals, an express policy regarding the steps required to process and record this type of information would substantially improve the EDA complaint processing to ensure that information from outside parties regarding potential misconduct is not missed.

VI. THE ACCELERATED RECERTIFICATION PROGRAM (THE "ARP")

A. Introduction

As discussed above, in order to fully investigate the administration of the Programs, the Task Force undertook to examine the EDA's processing of awards for companies that applied for and received tax-incentive credits under the Programs. Given the findings of the Comptroller's audit, moreover, the Task Force has sought to determine whether each company in scope was compliant with applicable statutory, regulatory, and administrative requirements when the EDA approved its application and when it received tax credits under Grow NJ or ERG. To facilitate an investigation and review process that promotes resource efficiency, collaboration with companies, and expedient processing for compliant companies, the Task Force established the ARP. During its initial outreach and communications with companies in scope, the Task Force received overwhelming interest in the ARP. As a result, the Task Force announced the ARP during its first public hearing on March 28, 2019.

Without an expedited process of the sort provided by ARP, the Task Force would have conducted a broader investigation into each company's award. This could have included expansive document requests, interviews of relevant company personnel, and extensive document and data review. As an alternative, the ARP provides companies a streamlined process to proactively establish that they are in compliance with the Programs' requirements. If a company declined to participate in the ARP, or if the Task Force deemed it ineligible, the company's award is subject to the broader investigative process necessary to carry out the Task Force's mission.

B. ARP Participant Companies

The Task Force deems companies eligible for the ARP if the company (1) completes and submits an initial affidavit (the "ARP Initial Affidavit") and (2) the Task Force has not received or identified information suggesting misconduct, fraud, or other non-compliance with applicable requirements with respect to the company's application for, approval for, or issuance of tax incentives.

The Task Force requires each company's CEO, or equivalent personnel, to execute the ARP Initial Affidavit, which provides additional company information to the Task Force. The ARP Initial Affidavit requires companies to describe their efforts to comply with the Task Force's document preservation directive and to identify document custodians and third parties that may possess relevant documents. Companies must also agree to voluntarily and promptly produce relevant documents to the Task Force. As of the date of this Report, 53 companies have pursued participation in the ARP. Despite the overwhelming participation in ARP, we note that approximately 8 otherwise eligible companies expressly declined to participate in the ARP. We appreciate that each company operates under a different set of resources, frameworks, and stakeholders. Therefore, we emphasize that at this time, we cannot— and have not—drawn any conclusions about companies that did not elect to participate in the ARP.

There have been several instances where companies sought inclusion into the ARP, but their eligibility is still under consideration by the Task Force for myriad reasons. In some instances, the Task Force has become aware of concerning information regarding the company's application or award. For example, for a number of companies, the Task Force has learned through independent evidence and information that the company's assertions regarding its intention to relocate are questionable. In these cases, proposed jobs may not have actually been at risk of leaving or locating outside of New Jersey, contrary to the companies' representations to the EDA. The Task Force reserved the option to investigate further before allowing the companies in question to participate in the ARP.

For other companies, the Task Force has become aware of information suggesting that these companies committed to locate in New Jersey before they submitted their EDA application. In other circumstances, the Task Force is aware of information suggesting misrepresentations or misconduct in connection with the jobs requirements of the award. In these cases, the Task Force reserved the ability to further investigate and review written responses and assertions made to the EDA to determine whether a company's application contained misrepresentations.

Several companies that exhibited threshold issues of the sort described above submitted the ARP Initial Affidavit. In the interest of transparency and continued cooperation, the Task Force contacted these companies to discuss obstacles to their ability to participate in the ARP. In many instances, companies were not deterred by this message and have continued to work with the Task Force to provide requested documents and information. The Task Force is reviewing this information before confirming the companies' categorization going forward.

Finally, there is a tranche of companies that the Task Force disqualified or deemed ineligible for ARP participation. The Task Force has disqualified companies where the Task Force has

identified a reasonable basis to believe that further investigation may reveal instances of misconduct, fraud, violations of applicable requirements, or other issues suggesting the company's lack of good faith. Separately, the Task Force may also disqualify companies where they fail to comply with the Task Force's requests or the ARP requirements.

C. ARP Process

In order to establish a process that would enable it to determine whether a company was in compliance with Program requirements, the Task Force carefully reviewed related statutes, EDA regulations and requirements, and met with key EDA personnel to determine exactly what it means "to be compliant." Thereafter, the Task Force created a framework for information requests, document collection, and interviews that would provide adequate information for the Task Force to review and make a determination of compliance with Program requirements. The Task Force has taken care to continue an open dialogue with each participating company to better understand the company's framework, business, and key stakeholders. Accordingly, while the Task Force has established a process for the ARP, it also is working collaboratively with each company, with an understanding that each company's documentation, application, and purported needs for the tax incentives vary significantly.

From a process perspective, once companies submit the ARP Initial Affidavit and are deemed eligible by the Task Force, the Task Force requests certain written responses, with supporting documents where necessary ("Verifying Documents"), related to each company's application. The Task Force's ARP for Grow NJ requires the company to submit additional documentation related to the company's good faith business plan to relocate or locate in New Jersey, its plan for new or retained full-time jobs, and its expenditures comprising its capital investment. The Task Force's ARP for ERG requires submission of documentation related to the project's financing gap and development and the project developer's good standing. While the ARP requires documentation beyond what the EDA requested, these requests are narrowly tailored to identify representative materials that will allow the Task Force to examine the company's application and award.[198] As part of the review process, the Task Force engages in open communication with the company for clarifications, context, and additional information.

A company must provide a final affidavit from its CEO, or equivalent personnel, ("Verification Affidavit") and the requested Verifying Documents. To assist companies, the Task Force provides a template Verification Affidavit that the company tailors to its specific

[198] For example, to assess the company's good faith intentions to locate to New Jersey, the Task Force requests contemporaneous business records or communications discussing the relocation plan and the suitability of the proposed alternative site.

circumstances. Thereafter, the company submits a draft affidavit. The Task Force reviews the information supplied to determine whether the company applied for its tax-incentive in good faith and with accurate information; met the application's requirements; and complied with the program requirements for each and every subsequent year it participated in the Programs. If the Task Force can make these determinations based on the information the company provides, the Task Force will accept a final Verification Affidavit. Upon successful completion of ARP, the Task Force will send a verifying closing letter ("Closing Letter"), confirming the company's successful re-certification.[199]

D. Initial Findings

The ARP process has provided the Task Force with opportunities to identify deficiencies with the Programs' designs and with the EDA processes to implement the Programs. By engaging with companies in the ARP and by collecting, reviewing, and analyzing information and data from the company's internal deliberations, the Task Force has been able to evaluate the requirements and EDA regulations from the company perspective.

Based on this examination, the Task Force has determined that both the existing legislation and the EDA requirements are ambiguous in certain respects that has impacted the EDA's ability to ensure consistency in how these requirements are applied across project applicants.[200] Some examples include:

- **EDA verification of cost benefit analysis**: An ARP company explained that after it submitted its application materials and cost benefit analysis, the EDA did not request any support for the line-item estimates in the company's cost benefit analysis, which showed that New Jersey was more expensive than the proposed alternate location. The company agreed that at the time of its application, the EDA had no verification that the line items in

[199] However, the Task Force's Closing Letter has no binding effect on any other agency or office of the State of New Jersey. Moreover, should the Task Force become aware of credible reason to believe there was misconduct, the Task Force reserves the right to make such information known to other law enforcement agencies.

[200] We understand that the EDA has, in the last year or so, begun to implement solutions to these deficiencies through its own processes and approval requirements.

its proposed estimate were accurate and not exaggerated, estimated, or manipulated in any way.[201]

- **Clear legislative guidance and definitions for award bonuses categories**: After another ARP company submitted its initial application to the EDA, the EDA questioned whether it qualified as a technology business for the purposes of an award bonus. Under the Grow NJ statute as amended by EOA 2013, "technology" is a "targeted industry" such that qualifying "technology" companies are eligible for an additional grant of up to $500 annually per job.[202] However, neither the Grow NJ statute, nor EDA's implementing regulations, nor any policy documents maintained by EDA define what constitutes a "technology" company. Based on the Task Force's review, the Task Force found that EDA employees struggled over the appropriate characterization for the company.

- **EDA requirements related to applicants' submissions regarding potential alternative locations**: The EDA has not consistently required applicants to submit the same materials regarding the viability of the proposed alternative site.

VII. RECAPTURE

The Task Force seeks to achieve not only recommendations for the tax-incentive programs prospectively but to recommend recapture of improperly credited taxpayer dollars. These recommendations and efforts for recapture have involved cooperation and coordination with several areas of New Jersey State government, including the EDA, the Department of Taxation, and the New Jersey Attorney General's Office.

A. Statutory Recapture Process

The current Grow NJ legislation specifically sets forth language identifying the EDA's authority to recapture tax-incentive awards under certain circumstances.

Under the Grow NJ Act, applicants must enter into an incentive agreement with the EDA before the awardees receives any tax credits. One of the required provisions of this incentive agreement is that the applicant commits to remaining in its New Jersey facility for a minimum period of time. Typically, this period would include a ten-year term, during which the company

[201] The Task Force closely examined supporting information provided by the company, including the actual costs accrued after the company successfully received its grant and moved to New Jersey, and found no indication that the proposed analysis was made in bad faith.
[202] *See* N.J. Stat. §§ 34:1B-246(c)(8), 34:1B-243 ("targeted industry" definition).

receives its award amount as annual credits, plus an additional five years after all annual credits are issued.[203] The statute further requires that if the company fails to honor this commitment, the EDA may recapture all or part of the tax credits awarded, although EDA retains the discretion to recognize the period of time that the company complied with the award requirements.[204]

B. Task Force Recommendations for Recapture

The Task Force has instituted its own processes to recommend recapture of tax-incentive awards and to assist the EDA with its recapture of tax-incentive awards.

When companies have indicated a willingness to cooperate and disclose any potential non-compliance, the Task Force has offered, and will continue to recommend and connect the company with the State Treasury for settlement. The Task Force considers such settlement recommendations based on the company's specific factual circumstances. However, for the Task Force to consider a settlement recommendation, the company must be willing to agree to several terms. First, the company must voluntarily terminate its tax-incentive award, including taking all steps that the EDA requires for the company to terminate its award. Second, the company must repay the value of the tax-incentive benefit already claimed. Third, if it becomes aware of credible evidence of criminal misconduct relating to the tax-incentive programs, the Task Force reserves its right to make such information known to other enforcement authorities. Finally, any settlement agreement with a State agency does not bind any other agency or office of the State of New Jersey. Companies that settle do not admit to any liability.

Separate from potential settlements, the Task Force has also referred, and will continue to refer, certain companies and awards to the EDA to consider whether additional credits should issue or whether previously received credits should be recaptured. The Task Force may also refer companies to appropriate law enforcement authorities for further investigation. Should law enforcement authorities pursue a criminal investigation and charges, this could generate sufficient evidence that a company's award was improperly awarded.

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[203] *See* N.J. Stat. Ann. § 34:1B-243 (defining the "eligibility period" as "the period in which a business may claim a tax credit," beginning with the first year the company certifies for a credit but that the term will be no longer than 10 years); *Id.* (defining "commitment period" as "1.5 times the eligibility period").

[204] *See* N.J. Stat. Ann. § 34:1B-245(d); *see also* N.J. Admin. Code § 19:31–18.10(b)(3).

Currently, the Task Force has referred a number of applicants for suspension /or termination of their tax-incentive awards or obtained voluntary termination. In all, the aggregate amount of the grants at issue exceeds $500 million.

VIII. RECOMMENDATIONS

Executive Order No. 52 called for the Task Force to offer advice concerning the future of New Jersey's tax-incentive programs. Although the Task Force's work remains ongoing, its investigation and analysis to date have revealed certain deficiencies in the design, implementation, and oversight of the Programs now in place. Based on its findings, the Task Force offers the following recommendations with respect to the State's current and future tax-incentive programs, which will be supplemented as the Task Force's work continues.

Recommendation 1: The Task Force's investigation to date has found that special interests have had a significant hand in molding the current Programs' legislation and implementing regulations in their favor. As a result, in certain respects, the Programs have not been "neutral" in their design but have instead been structured to favor the business interests of certain parties, and in some cases to disfavor other parties. Future tax-incentive legislation should be designed to ensure that legitimate public policy goals are applied neutrally, without favoring specific business interests.

Recommendation 2: Future tax-incentive legislation should be transparent with respect to the benefits or costs of the programs. Under the current Grow NJ program, all tax incentive awards are statutorily required to "yield a net positive benefit to the State."[205] Based on this statutory provision, the State should profit from the program. However, this requirement is undermined by provisions of the statute allowing the benefits calculation to include the value of certain taxes that the State will never actually collect. By allowing such so-called "phantom taxes" to be included in the benefits calculation, the "net positive benefit to the State" that is supposed to be required by the law may be rendered illusory, obfuscating the potential costs of the tax incentives and contributing to public confusion.

Recommendation 3: To further promote transparency and public understanding, the goals of future tax-incentive legislation should be clearly defined, and the program should be structured to effectuate those explicit goals—not other unspecified aims. Currently, the Grow NJ Act expressly states that a "purpose of the [Grow NJ] program is . . . to preserve jobs that currently exist

[205] N.J. Stat. § 34:1B-244(a)(3).

in New Jersey but which are in danger of being relocated outside of the State."[206] However, as discussed in Section IV(A)(1)(e) of this First Report, certain provisions of the Grow NJ Act are sufficiently vague that companies may be able to receive tax credits for relocating existing jobs in New Jersey to Camden or Atlantic City, even if the jobs were never "in danger of being relocated outside the State." Tax incentives in these circumstances clearly do not advance the statutory aim of preserving jobs in the State. If it was also an intended purpose of Grow NJ to incentivize the relocation of existing jobs from other parts of New Jersey to Camden or Atlantic City, it would have aided public understanding to set out this purpose explicitly in the statute, along with the other intended purposes.

Recommendation 4: Relatedly, the Task Force's examination has found that the current statutory text for the Programs contains ambiguities in certain respects. This is illustrated by the issues relating to the "material factor" test that applies to projects in Camden and Atlantic City. It also applies in other areas: for example, as discussed in Section VI(D) of this First Report, there was one instance in which it was unclear whether a company qualified under certain provisions of Grow NJ for "technology" companies—a statutory term that is not defined in the law. Ambiguities in statutory text are inevitable. However, when such ambiguities arise in the administration of a statute, the responsible agency should both determine the resolution of the issue and further publicize its decision so that the rules are clear and known and are applied consistently. When the EDA addresses statutory ambiguities such as this one, it should embody its decisions in published rules (whether in the form of regulations, formal policies, or other guidance documents) that are available to the public.

Recommendation 5: Future legislation should be designed to ensure that the EDA can better control whether companies that meet the employment or other requirements for only a small portion of their commitment period are eligible to receive their full annual award. It should also include provisions ensuring that companies cannot receive a full year's award without meeting the requirements for a full year, and without providing a full year's worth of data to prove their compliance.

Recommendation 6: The EDA should issue comprehensive written policies and procedures to guide its employees in administering the Programs and should implement formal internal training mechanisms with respect to all aspects of the current Programs and any future tax-incentive programs. Although the Task Force fully appreciates that the Programs are complex and often amended, the Task Force's investigation to date has nonetheless found undeniable

[206] N.J. Stat. § 34:1B-244(a).

deficiencies in certain EDA employees' understandings of the applicable requirements in various respects. The EDA's shortfall in the issuance of regulations and policy and guidance documents likely contributed to these deficiencies, as it limited the resources available to these employees.

Recommendation 7: As described above, the Task Force, third parties, and the media have all discovered significant and adverse information about program applicants, much of which required very little effort. Thus, it seems quite clear that—whatever the EDA's underwriters are doing in the way of independent research on applicants—the work has been deficient. Moreover, the notion of awarding applicants millions, tens of millions, or even hundreds of millions of dollars in tax incentives without a rigorous background check on the company, its officers, and affiliates defies common sense. Thus, we strongly urge that any new legislation include a provision directing the EDA to use a qualified professional services firm to conduct rigorous background checks.

Recommendation 8: With respect to the specific issue of assessing an applicant's representation that the applicant is considering locating outside of New Jersey, the Task Force's investigation to date has found clear deficiencies in the EDA's assessments. There have been instances in which Grow NJ applicants have made representations concerning the possibility of an out-of-state location that should have raised serious red flags concerning the applicant's sincerity, and yet the EDA failed to take any action to investigate the issue. As discussed above, the Grow NJ Act explicitly states that a "purpose of the [Grow NJ] program is . . . to preserve jobs that currently exist in New Jersey but which are in danger of being relocated outside of the State."[207] If tax incentives are awarded to incentivize a company to stay in the State when the company never actually intended to leave, then public funds are essentially wasted. The Task Force has found, however, that the EDA's administration of the Grow NJ program has in many ways not sufficiently appreciated this principle. The EDA should improve its performance with respect to this aspect of the program, including by providing clear guidance and training to employees on how to conduct such assessments and instructing them on the importance of this issue. The EDA should provide its employees with a clear framework to apply in assessing applicant representations concerning alternative locations.

Recommendation 9: Grow NJ applicants are required to include certifications, signed by the company's CEO (or an equivalent officer), representing that the CEO "has reviewed the information submitted to the [EDA in connection with the application] and that the representations contained therein are accurate."[208] However, issues may arise when a company modifies its

[207] N.J. Stat. § 34:1B-244(a).
[208] N.J. Stat. § 34:1B-244(d).

application at some point after it is submitted, but does not submit a new CEO certification attesting to the truthfulness of the new information. The EDA should have a formal policy or regulation requiring the submission of a new CEO certification whenever an application is materially changed after its submission.

IX. NEXT STEPS

As we noted at the outset, the Task Force is continuing its investigation. It will continue to review documents it has received in response to requests to the EDA and third parties, and to interview witnesses to gain a deeper understanding of any flaws in the design, implementation, or administration of the programs. Among other things, the Task Force intends to:

- Hold further public hearings in which the public will have the opportunity to share its views and perspectives;
- Focus its investigation on the design, implementation, and administration of the ERG Program;
- Continue its investigation of the EDA's oversight over Grow NJ and ERG applications;
- Consider additional ways to make the application and compliance verification process more robust;
- Continue the re-certification process for companies participating in the ARP; and
- Continue its efforts to recapture tax-incentive awards where warranted and, as necessary, make additional referrals to the appropriate enforcement authorities.

In addition, the Task Force will examine the impacts of certain aspects of the Programs that may differ from other states' programs, from prior New Jersey tax-incentive programs, or from best practices described by policy experts. In that regard, the Task Force intends to further examine the policy recommendations made by two of the experts that testified during the first day of the public hearings, Josh Goodman, Senior Officer for State Fiscal Health, at The Pew Charitable Trust, and Jon Whiten, Deputy Director of State Communications at the Center on Budget and Policy Priorities. In particular, the Task Force intends to explore:

- Whether the State should consider targeting its tax incentives to businesses that will increase the State's economic growth by serving national and international markets, rather than local markets;
- Whether the State should shorten the timeframes for receiving tax incentives, in an effort to spend less on incentives while achieving the same impact, and to enable it to better predict the costs and benefits of awarding incentives to businesses;

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- Whether the Programs' approach to awarding tax incentives in distressed areas sufficiently benefits the residents of those areas and what steps, if any, could be taken to fine tune New Jersey's approach to using tax incentives to help economically distressed areas to ensure that residents of distressed areas actually benefit from tax incentives targeted at improving the economy in distressed areas;
- Relatedly, whether to revise the method for calculating the net benefit to the State for companies moving to distressed areas;
- Whether capping the tax incentives by setting annual cost limits would improve the Programs, and what other options for increasing fiscal protections might be undertaken;
- Whether New Jersey should regularly conduct independent evaluations of the effectiveness of the tax incentives programs and to establish systems mandating greater oversight and annual evaluations of the Programs; and
- Whether the State should limit or prohibit the transfer of tax credits awarded under the Programs.

The Task Force will also seek the input of additional policy experts to the extent they have views on these issues.